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6
7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 June 2004 Grand Jury

10 UNITED STATES OF AMERICA,) CR No. 05-_____
11)
12 Plaintiff,) I N D I C T M E N T
13)
14 v.) [18 U.S.C. § 371: Conspiracy To
15) Commit Federal Offenses;
16 RALPHS GROCERY COMPANY,) 42 U.S.C. § 408(a)(7)(B): False
17) Representation Of Social
18 Defendant.) Security Number;
19) 18 U.S.C. § 1028(a)(7):
20) Identity Fraud;
21) 18 U.S.C. § 1001(a)(1):
22) Falsification And Concealment
23) Of Material Facts Within
24) Federal Agency Jurisdiction;
25) 18 U.S.C. § 1956(h): Money
26) Laundering Conspiracy;
27) 18 U.S.C. § 1956(a)(1)(B)(i):
28) Concealment Money Laundering;
29) 18 U.S.C. § 1027: False
30) Statements And Concealment Of
31) Facts Relating to Employee
32) Benefit Plan;
33) 18 U.S.C. § 1001(a)(2): False
34) Statement To Federal Agency;
35) 18 U.S.C. § 1503: Obstruction
36) Of Justice;
37) 18 U.S.C. § 2: Aiding And
38) Abetting And Causing An Act To
39) Be Done]

40 The Grand Jury charges:

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1. Defendant RALPHS GROCERY COMPANY ("RALPHS") is a Delaware corporation headquartered in Compton, California, whose principal business is operating supermarkets in California under the "Ralphs Supermarkets" ("Ralphs") and "Food 4 Less Warehouse Supermarkets" ("Food 4 Less") banners.

a. RALPHS operated approximately 300 supermarkets in
Northern California under the Ralphs banner.

c. RALPHS employed approximately 19,000 grocery clerks and meat cutters (collectively, "grocery workers") to staff its Southern California stores. Almost all of these employees were members of one of seven local unions of the United Food and Commercial Workers Union, AFL-CIO-CLC (collectively, the "Unions"; individually, the "Union").

e. RALPHS stores were grouped into Zones, each of which was headed by a Zone Manager. Each Zone consisted of

1 between approximately 18 to 20 stores. Store Directors reported
2 to Zone Managers.

3 f. Zones were grouped into three Divisions: Southern,
4 Central, and Northern. Each Division was headed by a Group
5 Vice-President, who was assisted by an Assistant Zone Manager.
6 Zone Managers reported to their respective Group Vice-President.

7 g. The three Group Vice-Presidents reported to the
8 Executive Vice-President for Store Operations, who, in turn,
9 reported to the President of Ralphs.

10 h. Ralphs and Food 4 Less shared certain support
11 functions, including the Human Resources, Labor Relations,
12 Personnel, Public Relations, and Security Departments, all of
13 which reported to the Group Vice-President for Human
14 Resources/Labor Relations, who, in turn, reported directly to the
15 Presidents of Ralphs and Food 4 Less.

16 3. RALPHS is indirectly owned and controlled by
17 The Kroger Co. ("Kroger"), a publicly-traded Ohio corporation
18 headquartered in Cincinnati, Ohio, which, as of January 2003,
19 operated supermarket chains in 32 states.

20 4. As used in this Indictment, "RALPHS' senior
21 management" refers to the following non-union management
22 positions at RALPHS, among others: the President of Ralphs, the
23 Executive Vice-President of Store Operations of Ralphs, the Group
24 Vice-Presidents for the Southern, Central, and Northern Divisions
25 of Ralphs; and the Group Vice-President of Human Resources/Labor
26 Relations, the Vice-President of Human Resources, the Director of
27 Labor Relations, and the Director of Personnel & Benefits of
28 Ralphs and Food 4 Less.

1 **II. APPLICABLE FEDERAL LABOR LAW PRINCIPLES**

2 **A. The National Labor Relations Act**

3 5. The National Labor Relations Act ("NLRA") is the
4 primary law governing relations between labor organizations (such
5 as unions) and employers whose operations affect interstate
6 commerce.

7 6. Section 7 of the NLRA (Title 29, United States Code,
8 Section 157) creates in employees certain rights, including: the
9 right to organize, to join, and to assist a labor organization;
10 the right to bargain collectively with their employer through a
11 representative of their own choosing; and the right to engage in
12 concerted activities for purposes of collective bargaining and
13 mutual aid and assistance, such as to strike and picket their
14 employer.

15 7. The NLRA seeks to protect the exercise of these rights
16 by deeming certain employer conduct to be an "unfair labor
17 practice." For example:

18 a. Section 8(a)(1) of the NLRA (Title 29, United
19 States Code, Section 158(a)(1)) makes it an unfair labor practice
20 for an employer to interfere with employees in their exercise of
21 the rights guaranteed them by Section 7 of the NLRA;

22 b. Section 8(a)(3) of the NLRA (Title 29, United
23 States Code, Section 158(a)(3)) makes it an unfair labor practice
24 for an employer to discriminate in regard to the hiring, tenure,
25 or conditions of employment of employees to discourage their
26 membership in a labor organization; and

27 c. Section 8(a)(5) of the NLRA (Title 29, United
28 States Code, Section 158(a)(5)) makes it an unfair labor practice

1 for an employer to refuse to bargain collectively with the
2 employees' representative.

3 **B. The National Labor Relations Board**

4 8. The National Labor Relations Board ("NLRB") is an
5 agency that is part of the executive branch of the United States
6 government. The NLRB has two primary functions:

7 a. To determine, by secret-ballot elections, whether
8 employees want to be represented by a union in dealing with their
9 employer, and, if so, by which union; and

10 b. To deter and remedy unfair labor practices.

11 9. The NLRB has primary responsibility for adjudicating
12 charges that an employer is engaging, or has engaged, in an
13 unfair labor practice.

14 10. Under the NLRA, if the NLRB determines that an
15 employer is engaging, or has engaged, in an unfair labor
16 practice, it may order the employer to, among other things:

17 a. Cease and desist from further violating the NLRA;

18 b. Reinstate affected employees with backpay;

19 c. Make contributions to an employee benefit plan
20 that the employer was required, but failed, to make;

21 d. Reimburse the employees' bargaining representative
22 for expenses incurred in the course of negotiating a new
23 collective bargaining agreement; and/or

24 e. Reimburse a party for its litigation expenses,
25 including attorneys' fees.

26 **C. Collective Bargaining**

27 11. The NLRA imposes on an employer and the employees'
28 bargaining representative the mutual obligation to meet at

1 reasonable times and confer in good faith with respect to the
2 negotiation of a written agreement regarding the wages, hours,
3 and other terms and conditions of employment of represented
4 employees. Such an agreement is known as a "collective
5 bargaining agreement" ("CBA"), and the employees covered by such
6 an agreement are referred to as "bargaining unit members."

7 12. Unions may bargain together on behalf of their
8 respective memberships in a "multi-union bargaining unit."
9 Employers may likewise bargain together in a "multi-employer
10 bargaining unit." Employers in a multi-employer bargaining unit
11 may, within certain limits, coordinate their activities for
12 purposes of responding to a labor action or the threat of one.

13 13. During negotiations to produce a new CBA, and as part
14 of its obligation to bargain in good faith, an employer may not
15 (with limited exceptions) unilaterally change the terms and
16 conditions of employment as specified in an expired CBA, unless
17 or until an "impasse" in negotiations is declared. Before an
18 impasse in negotiations is declared, such unilateral changes may
19 constitute an unfair labor practice in violation of
20 Section 8(a)(5) of the NLRA.

21 14. As further part of its obligation to bargain in good
22 faith, an employer may neither disregard a union as the
23 authorized bargaining representative of its members nor negotiate
24 directly with those members regarding wages, hours, and other
25 terms and conditions of employment. Such "direct dealing" may
26 constitute an unfair labor practice in violation of
27 Section 8(a)(1) of the NLRA.

28

1 D. Lockouts

2 15. A lockout is the withholding of employment by an
3 employer from its employees, usually for the purpose of creating
4 and maintaining economic pressure on the union and its membership
5 to accept the employer's lawful bargaining position. A lockout,
6 if conducted properly, is a lawful bargaining tactic that may
7 serve as the employer's response to a threatened or actual
8 strike.

9 16. An employer may continue to operate its business
10 during a lockout by hiring temporary replacement workers who are
11 not union members. An employer generally may not retain or
12 rehire bargaining unit members to work as temporary replacement
13 workers. Retaining or rehiring bargaining unit members as
14 temporary replacement workers may constitute an unfair labor
15 practice in violation of Sections 8(a)(1) and (a)(3) of the NLRA.

16 17. A "selective" lockout, also known as a "partial"
17 lockout, occurs when an employer retains or rehires only some of
18 the bargaining unit members it has locked out.

19 18. Generally, an employer may not selectively lock out
20 bargaining unit members, unless the employer has a demonstrable,
21 legitimate, and substantial business justification for doing so.
22 Engaging in an improper selective lockout may constitute an
23 unfair labor practice in violation of Sections 8(a)(1), (a)(3),
24 and (a)(5) of the NLRA.

25 19. An employer that declares a total lockout of all or a
26 defined group of bargaining unit members may not act
27 inconsistently with that declaration and selectively retain or
28 rehire only some of the otherwise locked-out bargaining unit

1 members. Such inconsistent conduct may constitute an unfair
2 labor practice in violation of Sections 8(a)(1) and (a)(3) of the
3 NLRA.

4 20. An employer that selectively retains or rehires only
5 some members of a locked-out bargaining unit during negotiations
6 toward a new CBA (even if such selective retention or rehiring is
7 otherwise proper) must adhere to most of the terms and conditions
8 of the expired CBA. Unilaterally changing the terms and
9 conditions of employment of such retained or rehired bargaining
10 unit members may constitute an unfair labor practice in violation
11 of Sections 8(a)(1), (a)(3), and (a)(5) of the NLRA.

12 **E. Union Access To Relevant Information**

13 21. As part of its obligation to bargain in good faith, an
14 employer generally has a duty to give a union requested
15 information, to the extent the information is "relevant" to the
16 union's performance of its duties as bargaining representative.
17 To be relevant, requested information need only:

18 a. Have some bearing upon an issue that has arisen
19 between the union and the employer; and

20 b. Be of probable use to the union in carrying out
21 its duties as bargaining representative.

22 22. An employer may not refuse outright to comply with
23 what it considers to be an ambiguous or overbroad union request
24 for information. Rather, the employer must seek clarification
25 from the union, or comply with the union's request to the extent
26 the request seeks relevant information.

27 23. An employer's unjustified refusal to produce relevant
28 information requested by a union may constitute an unfair labor

1 practice in violation of Section 8(a)(5) of the NLRA.

2 **III. PRE-STRIKE NEGOTIATIONS BETWEEN RALPHS, ALBERTSONS, VONS,**
3 **AND THE UNIONS TOWARD A NEW COLLECTIVE BARGAINING AGREEMENT**

4 24. On or about October 5, 2003, a collective bargaining
5 agreement (the "Old CBA") between, on the one hand, RALPHS,
6 Albertsons, Vons, and Stater Brothers Markets (collectively, the
7 "Food Employers"), and, on the other hand, the Unions, was due to
8 expire.

9 25. The Old CBA governed the terms and conditions of
10 employment for grocery clerks, meat cutters, and pharmacists
11 employed by the Food Employers, including: hourly wage rates for
12 different classifications of employees; premium pay for overtime
13 hours and hours worked on holidays; minimum hours for part-time
14 and full-time employees; seniority rules; vacation pay; transfers
15 between stores and geographic areas; layoffs and reinstatement
16 following a layoff; and discharge for cause.

17 26. During the Summer of 2003, RALPHS, Albertsons, Vons,
18 and the Unions began negotiations toward a new collective
19 bargaining agreement. Although a party to the Old CBA, Stater
20 Brothers Markets was not involved in these negotiations because
21 it had entered into a so-called "me too" agreement with the
22 Unions, by which Stater Brothers Markets agreed to be bound by
23 the terms of any new CBA negotiated between RALPHS, Albertsons,
24 and Vons, and the Unions, and, in return, the Unions agreed not
25 to strike, picket, or take any other labor action against Stater
26 Brothers Markets in the event of a labor dispute.

1 **IV. THE SECRET MUTUAL STRIKE ASSISTANCE AGREEMENTS**

2 27. On or about September 5, 2003, RALPHS, Albertsons, and
3 Vons (collectively, the "Three Employers") entered into two
4 virtually identical "Mutual Strike Assistance Agreements"
5 (collectively, the "MSAA"). The MSAA was intended to be, and
6 was, kept secret from the Unions.

7 28. The MSAA provided for close coordination and
8 communications between the Three Employers in negotiating with
9 the Unions and in responding to a strike against one of the
10 Three Employers. The MSAA provided, among other things, that:

11 a. "In the event an Employer signatory to this
12 Agreement is struck by the Unions . . . and other Employers are
13 not struck, the signatory Employers shall, within 48 hours, lock
14 out all employees represented by the Unions";

15 b. "If the Employers unanimously agree, and only in
16 conformity with federal law, they may implement a partial
17 lockout . . ."; and

18 c. "[T]he existence of this Agreement is to remain
19 confidential at all times and under no circumstances to be
20 disclosed to the Union, except as required by law or legal
21 processes."

22 29. The MSAA also provided "a mechanism for sharing
23 certain costs of a strike or lockout among the Employers." The
24 amount of any cost-sharing payments to be made by any of the
25 Three Employers was to be calculated by a public accounting firm,
26 selected by the Three Employers, pursuant to a formula specified
27 in the MSAA. The formula adjusted revenue among the Three
28 Employers by comparing the revenue of each of the Three Employers

1 during the eight weeks immediately preceding a strike with their
2 respective revenue during and shortly after the strike.

3 30. Under the MSAA, if the Unions struck one of the Three
4 Employers, the other two were obligated to lock out their
5 employees. To ensure that an employer did not hire striking or
6 locked-out employees of another employer as temporary replacement
7 workers, the Three Employers agreed to exchange identifying
8 information regarding their respective grocery workers, so that
9 each employer would be able to determine whether or not an
10 applicant for a temporary replacement position was actually a
11 union member employed by one of the other employers.

12 V. THE JOINT EMPLOYER-UNION ADMINISTERED
13 BENEFIT AND PENSION FUNDS

14 31. The Old CBA required the Food Employers to make
15 monthly contributions to two joint employer-union administered
16 employee benefit funds (collectively, the "Funds"):

17 a. The United Food and Commercial Workers Unions and
18 Food Employers Benefit Fund (the "Benefit Fund"), which pays
19 health-related benefits on behalf of eligible bargaining unit
20 members and their spouses and dependents, as well as vacation
21 benefits and certain supplemental benefits; and

22 b. The Southern California United Food and Commercial
23 Workers Unions and Food Employers Joint Pension Trust Funds (the
24 "Pension Fund"), which pays pension benefits to eligible retired
25 bargaining unit members.

26 32. At all times relevant to this Indictment, the Funds
27 were jointly administered by the Food Employers and the Unions as
28 follows:

1 a. Each Fund was administered by a Board of Trustees
2 (the "Board");

3 b. Each Food Employer and each Union appointed one
4 trustee and one alternate trustee to the Board (collectively, the
5 "Trustees");

6 c. The Food Employer-appointed trustees collectively
7 could cast one vote, and the Union-appointed trustees
8 collectively could cast one vote;

9 d. If there was a deadlock between the Food Employer
10 trustees and the Union trustees, the deadlock would be broken by
11 a neutral arbitrator; and

12 e. The Trustees delegated day-to-day administration
13 of each Fund to an administrator (the "Administrator"), who was
14 assisted by an assistant administrator and a staff.

15 33. During most of the time relevant to this Indictment,
16 RALPHS' Director of Labor Relations served as its appointed
17 trustee ("RALPHS' Trustee"), and its Group Vice-President for
18 Human Resources/Labor Relations served as its appointed alternate
19 trustee ("RALPHS' Alternate Trustee").

20 34. The Old CBA provided that "[p]ayment of contributions
21 by the Employer required to be made to [the Funds] . . . shall be
22 made on or before the twentieth (20th) day of each month based
23 upon hours worked exclusive of overtime hours during the
24 preceding calendar month by each employee covered by this
25 collective bargaining Agreement." During the time relevant to
26 this Indictment, the amounts of each Food Employer's monthly
27 contributions to the Funds was determined, in part, by applying
28 contribution rates to the number of hours worked by bargaining

1 unit members for that employer.

2 35. The Old CBA provided that a Food Employer's monthly
3 contributions "shall be accompanied by a list of the names of the
4 employees for whom such contribution is made, showing the number
5 of hours worked, exclusive of overtime hours, by each such
6 employee during the preceding month."

7 36. In accordance with this provision, each month RALPHS
8 submitted 57 completed "Food Employer Report Forms" to the
9 Administrator. Each completed Food Employer Report Form was
10 accompanied by a computer print-out, which included the following
11 information for each employee listed: name, social security
12 number, date of birth, date of hire, store location, and number
13 of straight-time and total hours worked.

14 37. For each completed Food Employer Report Form, the
15 RALPHS Benefits Administrator had to sign under penalty of
16 perjury an "Employer Certification," which confirmed, among other
17 things, that "[t]his report . . . certifies that all persons
18 working as employees in the bargaining unit covered by the [Old
19 CBA] and all hours worked . . . during the period reported are
20 included."

21 38. References in this Indictment to "Remittance Reports"
22 are to the combined: (a) completed and certified Food Employer
23 Report Forms; and (b) their accompanying computer print-outs.

24 **VI. THE STRIKE/LOCKOUT**

25 39. On or about October 5, 2003, the Old CBA expired
26 without the Three Employers and the Unions having negotiated a
27 new CBA.

1 40. On or about October 8, 2003, the membership of the
2 Unions voted overwhelmingly to reject the new CBA being proposed
3 by the Three Employers, and authorized the Unions to call a
4 strike if necessary.

5 41. On or about October 11, 2003, the Unions struck Vons
6 and began picketing Vons stores.

7 42. On or about October 11, 2003, RALPHS' Director of
8 Labor Relations sent letters to the Presidents of all seven
9 Unions, "[t]o advise you that effective 6:00 a.m. on October 12,
10 2003 Ralphs Supermarkets will be locking out bargaining unit
11 members, with the exception of pharmacists, who will be permitted
12 to continue working for public health and safety reasons. . . .
13 Bargaining unit employees will be allowed to return to work when
14 the strike against Vons is concluded."

15 43. On or about October 12, 2003, RALPHS and Albertsons,
16 in accordance with the terms of the secret MSAA, locked out all
17 of their grocery clerks and meat cutters (but not pharmacists)
18 who were members of the seven Unions. The Unions thereafter
19 began picketing RALPHS and Albertsons stores.

20 44. RALPHS, Albertsons, and Vons all continued to operate
21 their stores during the strike/lockout using temporary
22 replacement workers, as well as non-union management and other
23 personnel brought in temporarily from other divisions.

24 45. On or about October 31, 2003, the Unions stopped
25 picketing RALPHS stores, which resulted in a substantial increase
26 in business at most RALPHS stores. Because RALPHS' senior
27 management was not expecting the Unions to stop picketing, RALPHS
28 was ill-prepared for the increase in business at these stores.

1 46. During the lockout (especially after the Unions
2 removed the picket lines from RALPHS stores), RALPHS needed
3 several hundred well-trained, experienced, and reliable grocery
4 workers who could: (a) operate its stores by competently and
5 efficiently performing necessary functions, such as receiving,
6 bookkeeping, price integrity, stocking, rotating and displaying
7 produce, and cutting and displaying meat; and (b) train and
8 supervise temporary replacement workers to perform these
9 functions.

10 47. The Three Employers and the Unions continued to
11 negotiate during the strike/lockout. Although negotiating
12 sessions were held only intermittently, an impasse in
13 negotiations was never declared by either side.

14 48. On or about February 26, 2004, the Three Employers and
15 the Unions entered into a "Labor Dispute Settlement Agreement."
16 On or about February 28 and 29, 2004, the membership of the
17 Unions voted to ratify the new CBA proposed by the Three
18 Employers (the "New CBA"). On or about March 1, 2004, striking
19 Vons and locked-out RALPHS and Albertsons employees began
20 returning to work.

21 49. In the New CBA, RALPHS achieved all of its primary
22 bargaining objectives.

23 50. In or about April 2005, Kroger announced publicly that
24 RALPHS had made payments to Albertsons and Safeway totaling
25 approximately \$147 million pursuant to the revenue-sharing
26 provisions of the MSAA. These payments were the result of the
27 substantial increase in revenue at RALPHS stores after the Unions
28 had stopped picketing them.

1 51. The Southern California grocery workers labor action
2 (the "labor action") affected 65,000 to 70,000 grocery workers
3 and lasted approximately four and one-half months, making it the
4 largest and longest labor dispute involving the grocery industry
5 in United States history.

6 **VII. OVERVIEW OF RALPHS' CRIMINAL CONDUCT**

7 52. During the lockout, RALPHS engaged in a company-wide
8 course of criminal conduct involving the hiring of locked-out
9 employees under false names, social security numbers, and
10 documentation, which was intended to, and did, undermine the
11 labor action. As described further below, as part of this course
12 of criminal conduct:

13 a. RALPHS selectively recruited locked-out employees
14 to secretly return to work as temporary replacement workers under
15 false identities;

16 b. RALPHS covertly hired and employed hundreds of
17 locked-out employees to work during the lockout under:

- 18 (i) names and social security numbers of other people; or
19 (ii) fictitious or altered names and social security numbers;

20 c. RALPHS adopted and followed a corporate policy
21 that, as applied, permitted, encouraged, condoned, and
22 deliberately ignored the hiring of locked-out employees under
23 false names and social security numbers;

24 d. RALPHS Store Directors falsely completed
25 government verification of identity and eligibility to work forms
26 (known as INS Forms I-9) for locked-out employees hired under
27 false identities, falsely attesting in these forms that they had
28 personally examined genuine identification documents presented by

1 such employees;

2 e. RALPHS caused locked-out employees who agreed to
3 return to work during the lockout to falsely complete government
4 tax withholding allowance certificates (known as IRS Forms W-4)
5 using false names and social security numbers;

6 f. RALPHS generated thousands of false hiring and
7 employment records for locked-out employees who were rehired
8 under false names and social security numbers to work during the
9 lockout;

10 g. RALPHS issued hundreds of weekly payroll checks to
11 locked-out employees in the false names they were using, and then
12 allowed these employees to cash the checks at RALPHS stores;

13 h. RALPHS affirmatively acted to conceal its hiring
14 of locked-out employees from the Unions by, among other things,
15 assigning locked-out employees to work at stores far from the
16 stores at which they regularly worked, moving locked-out
17 employees to new stores when they were seen working by Union
18 members, and refusing and failing to give the Unions requested
19 and relevant information that would have revealed that RALPHS was
20 selectively rehiring locked-out employees;

21 i. RALPHS issued hundreds of false IRS Forms W-2 to
22 locked-out employees who had worked under false names and social
23 security numbers, and submitted copies of these false forms to
24 the Social Security Administration ("SSA"), which thereafter
25 furnished them to the Internal Revenue Service ("IRS");

26 j. RALPHS submitted to the Funds dozens of false
27 Remittance Reports, which omitted thousands of hours worked at
28 RALPHS stores during the lockout by secretly rehired locked-out

1 and striking employees;

2 k. RALPHS caused its Benefits Administrator to
3 falsely certify the accuracy of false Remittance Reports
4 submitted to the Administrator of the Funds;

5 l. RALPHS falsified thousands of documents and
6 electronic records it was required by law to maintain as
7 necessary to the administration of the Funds;

8 m. RALPHS concealed, and caused its Trustee and
9 Alternate Trustee to conceal, information from the other Trustees
10 and from the Administrator of the Funds that RALPHS was legally
11 required to disclose; and

12 n. RALPHS caused its Trustee and Alternate Trustee to
13 violate their fiduciary duties of loyalty, honesty, and candor to
14 the Funds, the other Trustees, and the Administrator of the
15 Funds.

16 53. When, during the lockout, the NLRB began investigating
17 allegations that RALPHS was secretly rehiring locked-out
18 employees under false names and social security numbers, RALPHS
19 made materially false statements to the NLRB to defeat the
20 Unions' unfair labor practice charges that RALPHS was engaged in
21 an illegal selective lockout.

22 54. Late in the labor action, when federal law enforcement
23 agencies began to investigate RALPHS' secret hiring of locked-out
24 employees under false names and social security numbers, RALPHS'
25 senior management first attempted to falsely minimize the extent
26 of the company's illegal conduct, and then attempted to shift
27 responsibility for that conduct to lower levels of management,
28 falsely blaming Store Directors and others for not complying with

1 RALPHS' purported policy against the hiring of locked-out and
2 striking employees during the lockout.

3 55. When a federal grand jury began to investigate RALPHS'
4 secret hiring of locked-out employees under false names and
5 social security numbers, RALPHS sought to obstruct and impede the
6 grand jury's investigation by, among other things, concealing,
7 withholding, and delaying the production of documents responsive
8 to grand jury subpoenas.

9 56. RALPHS' covert hiring and employment of locked-out
10 employees under false names, social security numbers, and
11 documentation undermined the labor action in the following ways,
12 among others:

13 a. For locked-out employees who wanted to work during
14 the lockout, effectively conditioning their ability to do so on
15 their joining with RALPHS in an illegal conspiracy whose objects
16 included defeating the labor action, deceiving their Unions, and
17 committing violations of federal and state laws, including
18 criminal laws;

19 b. Depriving the Unions of relevant information to
20 which they were entitled regarding matters crucial to their
21 negotiating positions and strategy;

22 c. Undermining union solidarity and morale;

23 d. Prolonging the labor dispute and thereby draining
24 the Unions of their financial resources; and

25 e. Shielding RALPHS from the greater economic harm
26 that a lawful and complete lockout of grocery workers would have
27 caused it.

1 57. Furthermore, by concealing from the Unions and the
2 NLRB material information concerning its hiring of locked-out
3 employees, RALPHS avoided a possible finding by the NLRB that it
4 had engaged in an illegal lockout, a finding that RALPHS
5 internally estimated could cost it \$50 million to \$100 million or
6 more.

1 United States Code, Sections 1028(a)(7) and 2; and

2 c. Knowingly and willfully to falsify, conceal, and
3 cover up, and cause others to falsify, conceal, and cover up, by
4 trick, scheme, and device, material facts within the jurisdiction
5 of SSA and IRS, agencies of the executive branch of the United
6 States government, in violation of Title 18, United States Code,
7 Sections 1001(a)(1) and 2.

8 **II. THE MANNER AND MEANS OF THE CONSPIRACY**

9 60. The objects of the conspiracy were achieved in the
10 manner and by the means described below.

11 **A. RALPHS' Corporate Policy Regarding The Hiring Of**
12 **Locked-Out Employees**

13 **1. Background: RALPHS' Prior Policy And**
14 **The Policies Of Albertsons and Vons**

15 61. In or about the Summer of 2002, RALPHS was preparing
16 for a possible labor action by employees who were members of the
17 International Brotherhood of Teamsters Union ("Teamsters"). As
18 part of its preparation, in or about August 2002, RALPHS
19 distributed a confidential strike manual to its non-union
20 management personnel that set forth the procedures and policies
21 to be followed in the event of such a labor action. With respect
22 to the hiring of locked-out employees, the strike manual
23 emphasized: "Locked out members cannot be allowed to work, even
24 if they wish to do so." (underline in original).

25 62. In or about the Summer of 2003, Albertsons and Vons
26 were preparing for a possible labor action by the Unions.

27 a. As part of its preparation, in or about August or
28 September 2003, Albertsons distributed a confidential strike
manual to its non-union management personnel, which emphasized,

1 among other things, that "in the event of a lockout, Albertson's
2 cannot permit any bargaining associate to work even if she is
3 willing to work and/or cross the picket line, obtain financial
4 case status, or resign from the Union." (underline in original).

5 b. As part of its preparation, in or about September
6 2003, Vons instructed its district managers that:

7 i. The answer to the question "whether a store
8 manager may use an existing retail clerk from another area during
9 a labor dispute" is "an emphatic NO" (capitalization in original);

10 ii. "Discipline may be considered for anyone
11 hiring an existing employee";

12 iii. "You need to make sure your managers are
13 aware that not only can they not use our employees, they may not
14 hire anyone who works from [sic] Albertson's or Ralphs"; and

15 iv. **"Under no circumstances may you hire any
16 existing Ralphs or Albertsons employees as strike help in your
17 store. NO EXCEPTIONS WILL BE ALLOWED. This is your official
18 notification regarding this directive. Violation of this
19 directive will result in disciplinary [sic] up to and including
20 discharge."** (bold and capitalization in original).

21 2. The RALPHS "Not Knowingly Hire" Policy

22 63. In or about the Summer of 2003, RALPHS, like
23 Albertsons and Vons, began preparing for a possible labor action
24 by the Unions.

25 64. As part of its preparation, in or about September
26 2003, RALPHS distributed a confidential strike manual to its non-
27 union management personnel that set forth the procedures and
28 policies to be followed in the event of such a labor action.

1 While nothing prevented RALPHS from adopting a policy that
2 absolutely and unequivocally prohibited the hiring of locked-out
3 and striking employees in the event of a lockout (as Albertsons
4 and Vons had done and as RALPHS itself had done in 2002 in
5 anticipation of the Teamsters labor action), RALPHS instead
6 adopted the following policy:

7 Under no circumstances should [Store
8 Directors] **knowingly hire** members from
9 the striking bargaining unit. This
10 would include striking union members
11 employed by competitors involved in the
12 labor dispute. In order to leverage
13 our bargaining position, we must
14 enforce this policy. (bold and italics
15 added).

16 65. This policy came to be known within RALPHS as the "not
17 knowingly hire" policy. On its face, this policy was different
18 from the Albertsons and Vons policies and RALPHS' earlier policy,
19 as it did not absolutely and unequivocally prohibit the hiring of
20 locked-out and striking employees in all circumstances. Instead,
21 it could be, and was, applied to allow Store Directors to hire
22 locked-out and striking employees if they could plausibly deny
23 knowing that applicants for temporary replacement positions were
24 union members.

25 66. In fact, Zone Managers and Store Directors came to
26 understand the "not knowingly hire" policy to be tacit approval,
27 if not encouragement, by RALPHS' senior management to hire
28 locked-out and striking employees as temporary replacement
29 workers. This understanding resulted from a number of facts and
30 circumstances, including the following:

31 a. As RALPHS' senior management knew, in past labor
32 actions involving grocery workers (including a strike by grocery

1 clerks in 1978 and a lockout of meat cutters in 1985), Store
2 Directors had rehired locked-out employees under false
3 identities. As a result, Store Directors could again be expected
4 to rehire locked-out employees under false identities unless
5 RALPHS adopted and enforced an absolute and unequivocal policy
6 prohibiting and penalizing such conduct.

7 b. Unlike in most cases involving new and important
8 corporate policies, RALPHS' senior management did not require
9 Store Directors to execute a written acknowledgment that they had
10 read the "not knowingly hire" policy, understood and would comply
11 with it, and knew that they would be subject to disciplinary
12 action, up to and including termination, if caught violating it.

13 c. RALPHS' senior management considered, but decided
14 against, specifying whether or what disciplinary action would be
15 taken against Store Directors caught violating the "not knowingly
16 hire" policy.

17 d. In explaining the "not knowingly hire" policy to
18 Zone Managers, RALPHS' senior management emphasized the word
19 "knowingly," which resulted in Zone Managers emphasizing the word
20 "knowingly" when explaining the policy to Store Directors.

21 e. Leading up to and during the lockout, RALPHS'
22 senior management made statements and comments to Zone Managers
23 and Store Directors that tended to confirm that Store Directors
24 were permitted, if not expected, to hire locked-out employees as
25 necessary to help operate their stores.

26 f. When members of RALPHS' senior management visited
27 stores during the lockout and recognized locked-out employees
28 working, they did not instruct the Store Directors to immediately

1 terminate these employees, nor did they take any action against
2 the Store Directors for having hired such employees in violation
3 of the "not knowingly hire" policy.

4 g. As RALPHS' senior management knew and understood
5 (especially after the Unions stopped picketing RALPHS stores),
6 Store Directors could not operate their stores in the manner
7 demanded by RALPHS' senior management without a cadre of
8 well-trained and experienced grocery workers. As RALPHS' senior
9 management also knew and understood, however, the only large and
10 available pool of such workers was locked-out and striking
11 employees.

12 h. Between the beginning of the lockout on
13 October 12, 2003, and early January 2004 (when RALPHS' hiring of
14 locked-out employees under false names and social security
15 numbers was first reported in the press), RALPHS' senior
16 management made only minimal and disingenuous efforts to monitor
17 compliance with and enforce the "not knowingly hire" policy. For
18 example:

19 i. RALPHS conducted only one search during this
20 period of the databases containing the identifying information
21 for locked-out Albertsons and striking Vons employees to
22 determine if any such employees had been hired by RALPHS as
23 temporary replacement workers;

24 ii. RALPHS conducted only a few sporadic searches
25 during this period of its own database to determine if it had
26 hired any of its own locked-out employees as temporary
27 replacement workers; and
28

1 iii. RALPHS' senior management ignored, or failed
2 to diligently investigate, reports that Store Directors were
3 hiring locked-out employees under false names and social security
4 numbers.

5 **B. RALPHS' Hiring Of Temporary Replacement Workers**

6 67. Leading up to and during the lockout, RALPHS Store
7 Directors were responsible for recruiting, hiring, and training
8 temporary replacement workers.

9 68. For a Store Director to hire a temporary replacement
10 worker, the following documents had to be completed by the
11 applicant and the Store Director (or by delegation the Manager of
12 Operations):

13 a. Temporary Work Employment Application: This form
14 was required to be completed by the applicant. It required the
15 applicant to state, among other things, his or her name, social
16 security number, current and/or latest employment, and whether he
17 or she had ever previously worked for RALPHS. It also required
18 the applicant to certify that "the information and answers given
19 by me in this Employment Application are true and correct to the
20 best of my knowledge[.]"

21 b. Payroll Authority - Temporary Employee: This form
22 was typically completed by the Store Director and signed by the
23 applicant. It required, among other things, the applicant's name
24 and social security number. It also asked whether the applicant
25 had previously worked for RALPHS.

26 c. INS Form I-9, Employment Eligibility Verification:
27 RALPHS was required by law to complete this form for all new
28 hires, including temporary replacement workers.

1 i. Section 1 of the form had to be completed by
2 the applicant. It required the applicant to list, among other
3 things, his or her name, date of birth, social security number,
4 and address. It also required the applicant to attest that he or
5 she was "aware that federal law provides for imprisonment and/or
6 fines for false statements or use of false documents in
7 connection with completion of this form."

8 ii. Section 2 of the form had to be completed by
9 the Store Director. It required the Store Director to verify the
10 applicant's identity and eligibility to work by personally
11 examining certain acceptable forms of identification documents,
12 and to record information about each document examined. It also
13 required the Store Director to sign a "Certification," by which
14 the Store Director "attest[ed], under penalty of perjury, that
15 [he or she had] examined the [identification] document(s)
16 presented by the above-named employee, [and] that the above-
17 listed document(s) appear to be genuine and to relate to the
18 employee named[.]"

19 d. IRS Form W-4, Employee's Withholding Allowance
20 Certificate: Each applicant was required by law to complete this
21 form and to sign it under penalty of perjury. It required the
22 applicant to list, among other things, his or her name, social
23 security number, and address, as well as the total number of
24 allowances claimed for federal income tax purposes.

25 69. Before a temporary replacement worker was formally
26 hired and entered into the RALPHS electronic timekeeping and
27 computerized payroll systems, the Store Director (or by
28 delegation the Manager of Operations) had to enter certain

1 information into the RALPHS Human Resources Information System
2 ("HRIS"). This information included: the applicant's name,
3 social security number, date of birth, and home address; whether
4 the applicant was a union member; and whether the applicant was
5 eligible to receive health, pension, and other welfare benefits.

6 70. If an applicant was an existing RALPHS employee, HRIS
7 would so indicate when the Store Director entered the applicant's
8 social security number and would not permit the Store Director to
9 complete the hiring process.

10 C. RALPHS' Recruitment Of Locked-Out Employees
11 To Work During the Lockout

12 71. Leading up to and during the lockout, a number of
13 RALPHS Zone Managers asked their Store Directors to identify
14 grocery workers who might be willing to work during a strike or
15 lockout. A number of Zone Managers also attempted to assemble
16 "roving teams" of grocery workers who could assist at different
17 stores within a Zone in the event of a strike or lockout. A
18 number of Zone Managers also discussed among themselves
19 "swapping" grocery workers who might be willing to work during a
20 strike or lockout.

21 72. In meetings with Store Directors before the lockout, a
22 number of Zone Managers suggested that Store Directors could hire
23 locked-out employees as temporary replacement workers, as long as
24 the Store Directors could plausibly deny knowing that the
25 applicants were locked-out employees.

26 73. Store Directors most frequently targeted "key persons"
27 (that is, highly experienced grocery workers entrusted with
28 store-level management responsibility) when recruiting locked-out

1 employees to return to work. Store Directors recruited key
2 persons because they: (a) were experienced, skilled, and trusted
3 employees; (b) tended to be loyal toward RALPHS due to their long
4 tenure with the company; and (c) might want to impress RALPHS'
5 management with their loyalty to enhance their chances of
6 obtaining a promotion to a management position.

7 74. In some instances, Store Directors induced and
8 persuaded locked-out employees to return to work by suggesting or
9 implying that by working during the lockout they would be in a
10 better position to obtain a promotion or other favorable
11 treatment after the lockout ended.

12 75. Locked-out employees who wanted to return to work were
13 told by Store Directors, or understood from word of mouth, that
14 they could only work during the lockout if they agreed to use a
15 false name and social security number.

16 D. RALPHS' Hiring Of Locked-Out Employees Under
17 False Names, Social Security Numbers, And
Documentation

18 76. During the lockout, RALPHS Store Directors knowingly
19 hired hundreds of locked-out employees under false names, social
20 security numbers, and documentation. These locked-out employees
21 were hired in the following ways, among others:

22 a. Some locked-out employees were hired and worked as
23 temporary replacement workers at the stores at which they
24 regularly worked (their "home stores").

25 b. Some locked-out employees were hired as temporary
26 replacement workers at their home stores, and then assigned to
27 other stores at which they worked as temporary replacement
28 workers (sometimes as part of a swap of locked-out employees).

1 c. Some locked-out employees were referred by the
2 Store Directors at their home stores to other stores at which
3 they were hired and worked as temporary replacement workers (also
4 sometimes as part of a swap of locked-out employees).

5 d. Some locked-out employees approached Store
6 Directors at stores other than their home stores, on their own
7 initiative, and were hired and worked as temporary replacement
8 workers at the other stores.

9 77. Locked-out employees who agreed to work during the
10 lockout had to work under false names and social security
11 numbers, or else they could not be entered into HRIS. Locked-out
12 employees who worked during the lockout chose, or were assigned,
13 false names and social security numbers in the following ways,
14 among others:

15 a. Some locked-out employees provided Store Directors
16 with, and worked under, the names and social security numbers of
17 family members, such as a spouse, child, brother, or sister.

18 b. Some locked-out employees provided Store Directors
19 with, and worked under, entirely fictitious names and social
20 security numbers.

21 c. Some locked-out employees provided Store Directors
22 with, and worked under, altered versions of their names and
23 social security numbers.

24 d. Some female locked-out employees provided
25 Store Directors with, and worked under, their maiden names and
26 false social security numbers.

27 e. Some Store Directors, on their own initiative,
28 transposed the last two digits or otherwise altered locked-out

1 employees' social security numbers and slightly changed
2 employees' names in HRIS, and then assigned the employees the
3 false names and social security numbers.

4 78. In hiring locked-out employees to work during the
5 lockout, Store Directors (or in some cases Managers of
6 Operations):

7 a. Falsely completed Payroll Authorities by listing
8 false names and social security numbers for applicants;

9 b. Caused applicants to falsely complete Section 1 of
10 the INS Forms I-9 by causing them to list false names, social
11 security numbers, dates of birth, and addresses;

12 c. Falsely certified under penalty of perjury on
13 Section 2 of the INS Forms I-9 that they had personally examined
14 genuine identification documents presented by applicants who were
15 locked-out employees;

16 d. In some instances, altogether failed to complete
17 INS Forms I-9 for applicants who were locked-out employees, in
18 violation of RALPHS' legal obligation to complete this form
19 whenever it hired any new worker;

20 e. Caused applicants to falsely complete Temporary
21 Work Employment Applications by causing them to list false names,
22 social security numbers, dates of birth, addresses, and
23 employment histories; and

24 f. Caused applicants to falsely complete
25 IRS Forms W-4 by causing them to list false names, social
26 security numbers, and addresses, and to sign these false forms
27 under penalty of perjury.

1 79. In hiring locked-out employees under false names and
2 social security numbers, Store Directors (or in some cases
3 Managers of Operations) entered false information into HRIS
4 including, among other things, false names, social security
5 numbers, dates of birth, and addresses, as well as false
6 information that applicants were not bargaining unit members
7 and were not eligible to receive employee benefits.

8 80. Because of the configuration of RALPHS' computerized
9 hiring system, RALPHS' senior management knew and understood that
10 locked-out employees could not be hired as temporary replacement
11 workers unless they were assigned and agreed to work under false
12 names and social security numbers.

13 E. RALPHS' Issuance Of Payroll Checks In False Names To
14 Locked-Out Employees Who Worked Under False Names And
Social Security Numbers

15 81. Temporary replacement workers were paid by check on a
16 weekly basis, for work performed during the preceding week.

17 82. During the lockout, RALPHS issued hundreds of weekly
18 paychecks to locked-out employees who were working under false
19 names and social security numbers. To conceal and disguise that
20 these temporary replacement workers were actually bargaining unit
21 members, RALPHS issued these paychecks in the false names under
22 which the locked-out employees were working.

23 83. Because these checks had been issued in false names,
24 most locked-out employees could not cash them at a bank or other
25 reputable check-cashing institution. To further conceal and
26 disguise that locked-out employees were working under false names
27 and social security numbers, RALPHS, knowing that the checks had
28

1 been issued in false names, permitted locked-out employees to
2 cash them at RALPHS stores.

3 **F. RALPHS' Deliberate Actions To Conceal Its Hiring Of**
4 **Locked-Out Employees From The Unions**

5 84. During the lockout, RALPHS took the following
6 deliberate actions, among others, to conceal its hiring of
7 locked-out employees from the Unions:

8 a. RALPHS required that locked-out employees who
9 returned to work during the lockout adopt and use false names
10 when working in their assigned stores, including wearing name
11 badges displaying their false names.

12 b. RALPHS assigned locked-out employees to work at
13 stores other than their home stores, including in many instances
14 stores that were considerable distances from their home stores.

15 c. Store Directors assigned locked-out employees to
16 perform tasks that kept them away from the front of the store, or
17 to work shifts when the stores were closed to the public.

18 d. When locked-out employees working at RALPHS stores
19 were recognized by other union members, they were transferred to
20 other RALPHS stores, and, in some instances, assigned new false
21 names and social security numbers.

22 e. The President of Ralphs and other members of
23 RALPHS' senior management made statements to the public and to
24 the Unions and their membership that created the false and
25 misleading impression that RALPHS intended to, and had, locked
26 out all grocery workers covered by the Old CBA.

27 f. Zone Managers used code words, such as
28 "experienced workers," "experienced help," "skilled workers," and

1 "skilled help," when communicating with members of RALPHS' senior
2 management about the recruitment and hiring of locked-out
3 employees.

4 g. RALPHS refused and failed to comply with Union
5 requests for relevant information, made in October 2003 and again
6 in December 2003, that would have revealed that it was hiring
7 locked-out and striking employees as temporary replacement
8 workers.

9 h. RALPHS falsified its hiring and employment records
10 (as described in paragraphs 78 and 79 above) to conceal and
11 disguise its hiring of locked-out employees in the event the
12 Unions were able to obtain access to those records.

13 i. RALPHS omitted from Remittance Reports, which were
14 submitted to the Administrator of the Funds and available to the
15 Unions, thousands of hours worked by locked-out employees during
16 the lockout (as described further in paragraphs 129
17 and 130 below).

18 G. RALPHS' Efforts To Cover Up The Full Extent Of Its
19 Hiring Of Locked-Out Employees Under False Names And
Social Security Numbers

20 85. On or about January 1, 2004, a local San Diego County
21 newspaper reported that certain RALPHS stores in that area had
22 rehired locked-out employees under false names and social
23 security numbers. The newspaper article quoted RALPHS' Director
24 of Public Relations as falsely stating that RALPHS was "not aware
25 of that happening at any of our stores, and that certainly is not
26 our policy." In fact, as RALPHS' senior management was well
27 aware, Store Directors had been hiring locked-out employees under
28 false names and social security numbers since the beginning of

1 the lockout, and it was RALPHS' policy to permit and encourage
2 such hiring.

3 86. The newspaper article was circulated to and read by
4 RALPHS' senior management on or about the day of its publication.

5 87. Immediately after the article was published, members
6 of RALPHS' senior management directed Zone Managers, who, in
7 turn, directed Store Directors, to begin inconspicuously
8 terminating any temporary replacement workers known or believed
9 to be locked-out or striking employees.

10 88. In terminating temporary replacement workers known or
11 believed to be locked-out or striking employees, Store Directors
12 listed false and fictitious reasons for the terminations.

13 89. On or about January 2, 2004, the Unions filed a civil
14 lawsuit against RALPHS in Los Angeles County Superior Court,
15 alleging that RALPHS had violated California wage and hour laws
16 by rehiring locked-out employees under false names and social
17 security numbers (the "State Civil Action").

18 90. Between on or about January 22, 2004, and on or about
19 February 25, 2004, RALPHS, through its outside civil counsel,
20 conducted depositions of eight Union representatives in the State
21 Civil Action, who provided evidence that more than 50 locked-out
22 employees had been seen by fellow union members working at RALPHS
23 stores.

24 91. On or about January 26, 2004, RALPHS hired a private
25 investigation firm, which it had used in the past, to investigate
26 the Unions' allegations in the State Civil Action. The firm,
27 however, was terminated after only ten days, just as it began
28 uncovering evidence tending to implicate RALPHS' senior

1 management in the alleged illegal conduct.

2 92. On or about January 27, 2004, two of the Unions served
3 RALPHS with discovery requests in the State Civil Action. While
4 the State Civil Action remained pending, RALPHS refused to comply
5 with the Unions' discovery requests.

6 93. Beginning in or about late-January 2004, RALPHS'
7 senior management attempted to conceal its involvement and
8 complicity in the hiring of locked-out employees under false
9 names and social security numbers, and to falsely shift
10 responsibility for such incidents to Zone Managers and
11 Store Directors, by, among other means, falsely asserting that:

12 a. RALPHS' corporate policy absolutely prohibited
13 Store Directors from hiring locked-out and striking employees
14 during the lockout;

15 b. RALPHS had made extensive efforts to ensure
16 compliance with this policy; and

17 c. Store Directors who had hired locked-out employees
18 during the lockout, and Zone Managers who had permitted or
19 encouraged such actions, were rogue managers acting in violation
20 of RALPHS' corporate policy.

21 **H. RALPHS' Issuance And Filing Of False Tax Documents**

22 94. In or about mid-January 2004, RALPHS issued hundreds
23 of materially false IRS Forms W-2 for 2003. These forms were
24 false in the following ways:

25 a. IRS Forms W-2 issued to locked-out employees who
26 worked during the lockout under entirely fictitious names and
27 social security numbers: (i) falsely stated the employees' names,
28 social security numbers, and addresses; (ii) falsely attributed

1 the income the employees received during the lockout to
2 fictitious persons; and (iii) falsely applied the social security
3 contributions withheld from such income to non-existent social
4 security accounts of fictitious persons.

5 b. IRS Forms W-2 issued to locked-out employees who
6 worked during the lockout under the names and social security
7 numbers of other persons: (i) falsely stated the employees'
8 names, social security numbers, and in some instances addresses;
9 (ii) falsely reported the income the employees had received
10 during the lockout as having been earned by other persons; and
11 (iii) falsely applied the social security contributions withheld
12 from such income to the social security accounts of other
13 persons.

14 c. IRS Forms W-2 issued to locked-out employees in
15 the employees' true names for work performed prior to the
16 lockout: (i) falsely underreported the total amount of income the
17 employees had received during 2003, by omitting the income they
18 had received during the lockout; and (ii) falsely understated the
19 amount of social security contributions that should have been
20 withheld from the employees' total annual income.

21 95. In or about March 2004, RALPHS electronically filed
22 copies of these false IRS Forms W-2 with SSA, for processing by
23 SSA. In filing these false forms with SSA, an authorized RALPHS
24 representative certified, among other things, that: "I understand
25 that I may be subject to penalties if I submit fraudulent
26 information," and "I am aware that any person who . . . intends
27 to deceive the Social Security Administration as to the true
28

1 identity of an individual could be punished by a fine or
2 imprisonment, or both."

3 96. As RALPHS knew and reasonably could have foreseen, in
4 or about May 2004, SSA electronically furnished the false IRS
5 Forms W-2 to IRS, for processing by IRS.

6 97. During the time relevant to this Indictment, RALPHS
7 had an ongoing legal obligation under the Internal Revenue Code
8 to correct any IRS Forms W-2 that it knew or later learned
9 contained false or inaccurate information. This obligation
10 required RALPHS to issue to employees, and file with SSA,
11 IRS Forms W-2c containing corrected information, as soon as
12 possible after discovery of an error. In violation of this
13 obligation, and to conceal from SSA and IRS that it had rehired
14 hundreds of locked-out employees under false identities and
15 issued them false IRS Forms W-2, RALPHS failed to issue and file,
16 and delayed issuing and filing, hundreds of IRS Forms W-2c.

17 I. RALPHS' Intent To Commit And To Aid And Abet Unlawful
18 Activity Constituting Violations Of Federal Law

19 98. In causing locked-out employees to use other
20 individuals' names, social security numbers, and other means of
21 identification to work during the lockout, RALPHS intended to
22 commit, and intended to and did aid and abet, the following
23 unlawful activity that constituted violations of Federal law:

24 a. Causing locked-out employees to falsely complete
25 IRS Forms W-4 using other individuals' names and social security
26 numbers, and signing these false forms under penalty of perjury,
27 in violation of Title 26, United States Code, Section 7205(a) and
28 Title 18, United States Code, Section 1001(a)(2);

1 b. Issuing materially false IRS Forms W-2 to
2 locked-out employees who worked during the lockout using other
3 individuals' means of identification, in violation of Title 26,
4 United States Code, Section 7204;

5 c. Filing these materially false IRS Forms W-2 with
6 SSA, knowing that SSA would subsequently furnish these false
7 forms to IRS, in violation of Title 18, United States Code,
8 Section 1001(a)(2);

9 d. Concealing from SSA and IRS the true and actual
10 amounts of income received in 2003 by locked-out employees who
11 worked for RALPHS during the lockout using other individuals'
12 means of identification, in violation of Title 18, United States
13 Code, Section 1001(a)(1);

14 e. Failing to correct false information submitted to
15 SSA and IRS by, among other things, failing to file, or timely
16 file, IRS Forms W-2c with SSA, upon learning that false
17 IRS Forms W-2 had been issued to locked-out employees who worked
18 during the lockout using other individuals' means of
19 identification, in violation of Title 18, United States Code,
20 Section 1001(a)(1); and

21 f. Concealing from SSA and IRS the true identities of
22 locked-out employees who worked during the lockout using other
23 individuals' means of identification, in violation of Title 18,
24 United States Code, Section 1001(a)(1).

25 99. In causing locked-out employees to use other
26 individuals' names, social security numbers, and other means of
27 identification to work during the lockout, RALPHS also intended
28 to commit the following unlawful activity that constituted

1 violations of Federal law:

2 a. Conditioning the ability of locked-out employees
3 who wanted to work during the lockout on the employees' agreement
4 to: (i) join an illegal venture that involved violations of
5 federal and state laws, including criminal laws; and (ii) engage
6 in covert conduct harmful to and destructive of the labor action
7 and their Unions, in violation of Sections 8(a)(1) and (a)(3) of
8 the NLRA;

9 b. Selectively retaining or rehiring locked-out
10 employees without a legitimate and substantial business
11 justification, in violation of Sections 8(a)(1), (a)(3), and
12 (a)(5) of the NLRA;

13 c. Declaring a complete lockout of grocery workers
14 covered by the Old CBA, and then, contrary to and inconsistent
15 with this declaration, secretly and selectively retaining and
16 rehiring such locked-out grocery workers, in violation of
17 Sections 8(a)(1) and (a)(3) of the NLRA;

18 d. Circumventing the Unions as the authorized
19 bargaining representatives of locked-out employees and instead
20 dealing directly with those employees regarding their wages,
21 hours, and other terms and conditions of employment during the
22 lockout, in violation of Section 8(a)(1) of the NLRA;

23 e. Hiring and employing locked-out employees as
24 temporary replacement workers, in violation of Sections 8(a)(1)
25 and (a)(3) of the NLRA; and

26 f. Employing locked-out employees under terms and
27 conditions different from those set forth in the Old CBA,
28 including terms and conditions governing wages, hours, seniority,

1 transfers, layoffs, reinstatement, discharge, and employer
2 contributions to the Funds, in violation of Sections 8(a)(1),
3 (a)(3), and (a)(5) of the NLRA.

4 **III. OVERT ACTS**

5 100. In furtherance of the conspiracy, and to accomplish
6 its objects, RALPHS, by and through its officers, employees, and
7 agents, together with others known and unknown to the Grand Jury,
8 committed and caused others to commit the following overt acts,
9 among others, in the Central District of California and
10 elsewhere:

11 Overt Act No. 1: On or about June 12, 2003, at a
12 meeting of the Task Force created to prepare RALPHS' confidential
13 strike manual, Task Force members discussed, among other things:

14 a. What would be the penalty for Store Directors
15 who knowingly hired locked-out or striking employees "with 'bad'
16 social security [numbers]";

17 b. Whether RALPHS' policy would be "Absolutely
18 No" rehiring of locked-out and striking grocery workers or
19 whether "there [would be any] gray area"; and

20 c. How well each of the Three Employers would
21 follow an absolute policy against the rehiring of locked-out and
22 striking grocery workers.

23 Overt Act No. 2: On or about June 12, 2003, a Task
24 Force member prepared and distributed to the other Task Force
25 members and to RALPHS' senior management a memorandum (the "June
26 12 memorandum") that purported to summarize the discussions at
27
28

1 the Task Force's meeting that day as follows:

- 2 • What will the penalty be for Store Director's
3 [sic] who knowingly hire Ralphs, Safeway or
4 Albertsons retail clerks/meatcutters?
- 5 • Need to confirm if the Company's position is
6 "absolutely NO Retail Clerks/Meatcutters" or is
7 there any gray area. (quotation marks and
8 capitalization in original).
- 9 • *The team is concerned with how well all 3*
10 *companies are going to adhere to this (italics in*
11 *original).*

12 In recounting these discussions, the June 12 memorandum omitted
13 any mention of the hiring of locked-out or striking employees
14 "with 'bad' social security [numbers]," although this subject had
15 been discussed at the June 12, 2003 Task Force meeting.

16 Overt Act No. 3: Between on or about June 12 and on or
17 about June 16, 2003, RALPHS' Vice-President of Human Resources
18 directed the author of the June 12 memorandum to remove the
19 reference to "is there any gray area" from the portion of the
20 June 12 memorandum quoted in Overt Act No. 2 above.

21 Overt Act No. 4: On or about June 16, 2003, the author
22 of the June 12 memorandum distributed to Task Force members and
23 to RALPHS' senior management a revised version of the June 12
24 memorandum, which was marked "Confidential" and dated June 16,
25 2003 (the "June 16 memorandum"). The June 16 memorandum
26 purported to describe the discussions regarding the hiring of
27 locked-out and striking employees, but revised the description by
28 omitting the "is there any gray area" language that appeared in
the June 12 memorandum.

Overt Act No. 5: On or about June 16, 2003, a revised
version of the June 16 memorandum was distributed to Task Force
members and to RALPHS' senior management that was identical to

1 the original June 16 memorandum, except that it was falsely
2 backdated to June 12, 2003.

3 Overt Act No. 6: In or about August and/or September
4 2003, RALPHS' senior management held one or more meetings, at
5 RALPHS' corporate headquarters, attended by Zone Managers, at
6 which:

7 a. Copies of the confidential strike manual
8 containing the "not knowingly hire" policy were provided to Zone
9 Managers for distribution to their Store Directors;

10 b. RALPHS' Vice-President of Human Resources
11 explained the "not knowingly hire" policy to Zone Managers,
12 placing particular and repeated emphasis on the word "knowingly";
13 and

14 c. RALPHS' senior management refused to change the
15 language of the "not knowingly hire" policy to absolutely and
16 unequivocally prohibit the hiring of locked-out employees, or
17 adopt penalties for Store Directors who violated that policy,
18 after a Zone Manager who was a member of the Task Force predicted
19 that Store Directors would rehire locked-out employees as they
20 had done in past labor actions, without a more strongly worded
21 policy and without any specified penalties for violating that
22 policy.

23 Overt Act No. 7: In or about September 2003, the Zone
24 Manager for Zone 7 met with his Store Directors and read the "not
25 knowingly hire" policy verbatim, using hand gestures to emphasize
26 the word "knowingly" in the same manner as had the RALPHS
27 Vice-President of Human Resources.

1 Overt Act No. 8: In or about mid-September 2003, the
2 Zone Manager for Zone 7 instructed his Store Directors to
3 identify RALPHS grocery workers who might be willing to work
4 during a labor action.

5 Overt Act No. 9: In or about mid-September 2003, the
6 Store Director for Store No. 34 in Laguna Niguel, acting in
7 accordance with the instructions of the Zone Manager for Zone 7,
8 asked his meat and seafood managers whether they would be willing
9 to work in the event of a labor action.

10 Overt Act No. 10: In or about the last week of
11 September 2003, during a pre-strike meeting attended by Store
12 Directors and other supervisors, the director of RALPHS' meat
13 division discussed the formation and use of roving crews of
14 locked-out or striking meat cutters in the event of a labor
15 action.

16 Overt Act No. 11: In or about late September or early
17 October 2003, the Group Vice-President for the Southern Division
18 directed the Zone Manager for Zone 5 to instruct his Store
19 Directors to determine whether their grocery workers would be
20 willing to work in the event of a labor action.

21 Overt Act No. 12: In or about late September or early
22 October 2003, the Group Vice-President for the Southern Division
23 directed the Zone Manager for Zone 5 to instruct his Store
24 Directors to network with store managers at Vons and Albertsons
25 for the purpose of "swapping" employees in the event of a labor
26 action.

27 Overt Act No. 13: In or about late September or early
28 October 2003, the Group Vice-President for the Southern Division

1 told the Zone Manager for Zone 5 that union members recruited
2 from Vons or Albertsons to work as temporary replacement workers
3 at RALPHS stores should falsely state in their temporary
4 employment applications that they had previously worked at
5 "Radio Shack," instead of at Vons or Albertsons.

6 Overt Act No. 14: In or about September 2003, at a
7 pre-strike meeting, the Zone Manager for Zone 5, when asked by
8 his Store Directors whether they could employ locked-out RALPHS
9 employees in the event of a labor action, responded by, among
10 other things: (a) using hand gestures to emphasize the word
11 "knowingly" in the "not knowingly hire" policy; and (b) stating
12 that such hiring would be permissible "as long as I don't know,"
13 or words to that effect.

14 Overt Act No. 15: In or about late September or early
15 October 2003, the Zone Manager for Zone 5 instructed the Store
16 Director for Store No. 108 in La Jolla to ask his grocery
17 workers, particularly his key persons, whether they would be
18 willing to work on a roving crew that would assist at various
19 RALPHS stores in that Zone in the event of a lockout.

20 Overt Act No. 16: In or about late September or early
21 October 2003, the Zone Manager for Zone 5 instructed Store
22 Directors in that Zone to identify and refer to the Store
23 Director for Store No. 207 in San Diego any RALPHS grocery
24 workers who might be willing to staff roving crews being
25 assembled by the Store Director for Store No. 207.

26 Overt Act No. 17: In or about September or early
27 October 2003, at a meeting for Store Directors in Zone 4, the
28 Zone Manager for Zone 4, when asked whether RALPHS could hire

1 union members from Vons and Albertsons in the event of a lockout,
2 responded by emphasizing the word "knowingly" in the "not
3 knowingly hire" policy.

4 Overt Act No. 18: In or about early October 2003, just
5 prior to the commencement of the lockout, the Store Director for
6 Store No. 743 in Pasadena asked one of his grocery clerks whether
7 she would be willing to return to work in the event of a strike
8 or lockout.

9 Overt Act No. 19: At a meeting in or about early
10 October 2003, the Zone Manager for Zone 8 told his Store
11 Directors that even though they were not supposed to hire
12 locked-out or striking employees, if they did not know whether an
13 applicant was a bargaining unit member or not, they should just
14 enter the information into HRIS without asking any questions.

15 Overt Act No. 20: In or about early October 2003, the
16 Group Vice-President for the Southern Division had a conversation
17 with the Store Director of Store No. 187 in Tustin Heights,
18 during which the Group Vice-President said, in reference to
19 RALPHS' policy regarding the hiring of locked-out and striking
20 employees, "Now you've been through a strike and now you know
21 what you really need to do to staff your store," or words to that
22 effect, which the Store Director understood to mean that if, as
23 in prior labor actions, he had the opportunity to hire a
24 locked-out or striking employee, he should do so.

25 Overt Act No. 21: On or about October 12, 2003, the
26 Store Director for Store No. 680 in Santa Barbara hired a locked-
27 out employee from Store No. 683 in San Marcos as a temporary
28 replacement worker, knowing that the employee was a union member

1 who was using a false name and the social security number of his
2 wife.

3 Overt Act No. 22: On or about October 12, 2003, the
4 Store Director of Store No. 163 in San Juan Capistrano hired a
5 grocery clerk referred to him by the Manager of Operations at
6 Store No. 15 in San Clemente Hills, after the grocery clerk
7 called the Store Director and told him that the Manager of
8 Operations had instructed her to use her daughter's social
9 security number, to which the Store Director replied, "fine. We
10 aren't checking [identification]," or words to that effect.

11 Overt Act No. 23: Between on or about October 12,
12 2003, and on or about October 31, 2003, the Group Vice-President
13 for the Southern Division told the Zone Manager for Zone 7 that
14 the Zone Manager should recruit "experienced" workers, which the
15 Zone Manager understood to refer to locked-out and striking
16 employees, to improve the conditions in Zone 7 stores.

17 Overt Act No. 24: Between on or about October 12,
18 2003, and in or about January 2004, the Zone Manager for Zone 1
19 instructed his Store Directors that locked-out employees hired
20 as temporary replacement workers should use false names, stating,
21 "[r]emember, Mary can't be Mary," or words to that effect.

22 Overt Act No. 25: On or about October 15, 2003, the
23 President of Ralphs sent a letter to locked-out employees falsely
24 stating, among other things, that in response to the strike of
25 Vons, "you and many of your co-workers were 'locked-out' as a
26 defensive move to protect our business. Unfortunately, you
27 should expect to be off the job away from work for many weeks."
28 In fact, by that time, RALPHS was already engaged in selectively

1 rehiring locked-out employees as temporary replacement workers.

2 Overt Act No. 26: In or about mid-October 2003, a few
3 days after the commencement of the lockout, the Meat Merchandiser
4 for Zone 6 directed a locked-out meat cutter to report for work
5 at Store No. 192 in Brea, knowing that the meat cutter was a
6 locked-out employee.

7 Overt Act No. 27: In or about mid-October 2003, after
8 the commencement of the lockout, the Assistant Zone Manager for
9 the Southern Division, at the direction of the Group
10 Vice-President for the Southern Division, asked the Zone Manager
11 for Zone 5 to explore the possibility of assembling a roving
12 price integrity team consisting of locked-out employees to assist
13 at RALPHS stores in the Southern Division.

14 Overt Act No. 28: Between in or about mid-October
15 2003 and in or about January 2004, the wife of the Store Director
16 of Store No. 163, who was a locked-out employee, worked at Store
17 No. 187 in Tustin Heights as a temporary replacement worker under
18 a false name and social security number. At the direction of the
19 Store Director of Store No. 187, she destroyed the pay stubs she
20 received during this period.

21 Overt Act No. 29: On or about October 17, 2003, the
22 Group Vice-President for the Southern Division instructed the
23 Zone Manager for Zone 5 to have the Store Director for Store
24 No. 168 in Encinitas terminate a locked-out employee who was
25 discovered by a data comparison run comparing the identities of
26 RALPHS temporary replacement workers and locked-out Albertsons
27 and striking Vons employees. While directing the termination,
28 the Group Vice-President for the Southern Division assured the

1 Zone Manager that the data comparison run was "a one-time purge,
2 if you know what I mean," or words to that effect, which the Zone
3 Manager understood to mean that his Store Directors could now
4 hire locked-out and striking employees.

5 Overt Act No. 30: On or about October 19, 2003, the
6 President of Ralphs sent a letter to locked-out employees falsely
7 stating, among other things, that "your union leaders agreed that
8 . . . if they carried through with their strike against any one
9 of the companies it would be considered a strike against all
10 three and the employees they represent would be locked out by the
11 non-struck companies. Your job at Ralphs is available to return
12 to now if your union leaders stop the strike against Ralphs." In
13 fact, certain locked-out employees could return to work at RALPHS
14 even during the lockout, as long as they agreed to work under
15 false identities and conceal from their Unions the fact that they
16 had returned to work.

17 Overt Act No. 31: On or about October 21, 2003, via a
18 "Store Operations Daily Strike Update" e-mail, the Zone Manager
19 for Zone 7 informed the Group Vice-President for the Southern
20 Division and RALPHS' senior management that "[e]ach day, various
21 [store] locations continue to receive members with 'experience,'"
22 by which the Zone Manager meant locked-out and striking
23 employees.

24 Overt Act No. 32: On or about October 22, 2003, via a
25 "Store Operations Daily Strike Update" e-mail, the Zone Manager
26 for Zone 7 informed the Group Vice-President for the Southern
27 Division and RALPHS' senior management that "[m]ore and more
28 'skilled' applicants," by which the Zone Manager meant locked-out

1 or striking employees, were "approaching Store Directors looking
2 for work."

3 Overt Act No. 33: On or about October 28, 2003, via a
4 "Store Operations Daily Strike Update" e-mail, the Zone Manager
5 for Zone 7 informed the Group Vice-President for the Southern
6 Division and RALPHS' senior management that "[w]e continue to
7 make every possible effort to exclusively recruit 'experienced
8 help,'" by which the Zone Manager meant locked-out and striking
9 employees, "especially in the area of meat cutters, produce
10 clerks and anyone with food service background."

11 Overt Act No. 34: In or about late October 2003, the
12 Store Director for Store No. 47 in Van Nuys asked a locked-out
13 employee from Store No. 81 in Woodland Hills to return to work to
14 help train temporary replacement workers at Store No. 47, telling
15 the locked-out employee that he would have to use the name and
16 social security number of a close friend or family member to be
17 hired as a temporary replacement worker.

18 Overt Act No. 35: In or about late October 2003, the
19 Zone Manager for Zone 6 asked the Zone Manager for Zone 5 for
20 advice about how to hire locked-out employees as temporary
21 replacement workers. In response, the Zone Manager for Zone 5
22 instructed that locked-out employees should work (a) under names
23 and social security numbers of family members, and (b) at stores
24 other than their home stores.

25 Overt Act No. 36: In or about late October 2003, the
26 Store Director for Store No. 743 in Pasadena asked a locked-out
27 employee from his store to return to work as a temporary
28 replacement worker, indicating that the locked-out employee would

1 be "taken care of," or words to that effect, by RALPHS after the
2 lockout if she agreed to do so.

3 Overt Act No. 37: In or about late October 2003, the
4 Store Director for Store No. 743 in Pasadena instructed a
5 locked-out employee from Store No. 743 to report to work at
6 Store No. 210 in West Los Angeles using a false name and social
7 security number.

8 Overt Act No. 38: On or about October 31, 2003, the
9 President of Ralphs sent a letter to locked-out employees falsely
10 stating, among other things, that "[a]s of Friday, October 31,
11 2003, [the] same UFCW locals that started the work stoppage
12 against the multi-employer group announced that they were
13 eliminating the picket lines at Ralphs. We hope the union hasn't
14 confused and misled you again. Because of the multi-employer
15 agreement with the union, all but Pharmacists are still locked-
16 out." In fact, by that time, RALPHS had secretly rehired
17 hundreds of locked-out employees as temporary replacement
18 workers.

19 Overt Act No. 39: Between in or about late October
20 2003 and in or around mid-December 2003, the Store Director for
21 Store No. 47 in Van Nuys cashed a weekly paycheck for a
22 locked-out employee working as a temporary replacement worker at
23 a different RALPHS store, telling the locked-out employee that,
24 if the store where he was working could not protect his identity,
25 the Store Director might arrange for the locked-out employee to
26 be assigned to a different RALPHS store.

27 Overt Act No. 40: In or about early November 2003, the
28 Group Vice-President for the Southern Division instructed the

1 Zone Manager for Zone 1 to contact the Zone Manager for Zone 5
2 about obtaining more "experienced" workers, which the Zone
3 Manager understood to be a reference to locked-out and striking
4 employees, to help at stores in Zone 1.

5 Overt Act No. 41: In or about early November 2003,
6 while inspecting Store No. 187, the Zone Manager for Zone 8
7 mentioned to the Store Director that he (the Store Director)
8 needed "experienced" workers. In response, the Store Director
9 pointed out a locked-out employee, who was the wife of the Store
10 Director of Store No. 163, and told the Zone Manager that she was
11 an experienced worker. The Zone Manager replied that the Store
12 Director needed more such employees.

13 Overt Act No. 42: In or about November 2003, the Group
14 Vice-President for the Southern Division, while inspecting Store
15 No. 163 in San Juan Capistrano, told the Store Director that he
16 needed to "start networking with your friends in San Diego," or
17 words to that effect, which the Store Director understood to be
18 instructions that he should contact Store Directors in the San
19 Diego area to see if they could refer any locked-out employees to
20 assist at his store.

21 Overt Act No. 43: In or about November 2003, the Zone
22 Manager for Zone 6 instructed a locked-out employee to use the
23 name and social security number of another person when returning
24 to work because the Unions were checking whether RALPHS was
25 rehiring locked-out employees.

26 Overt Act No. 44: In or about November 2003, the Zone
27 Manager for Zone 6 approved a locked-out employee from Store
28 No. 650 in Huntington Beach, within Zone 8, returning to work at

1 Store No. 72 in Fullerton, within Zone 6, knowing this person to
2 be a locked-out employee.

3 Overt Act No. 45: In or about November 2003, the Zone
4 Manager for Zone 6 reassured a locked-out employee from Zone 8
5 that she would not lose her recent promotion if it was discovered
6 that she had worked during the lockout because the Zone Manager
7 for Zone 6 had exchanged locked-out employees with the
8 Zone Manager for Zone 8.

9 Overt Act No. 46: In or about November 2003, the Group
10 Vice-President for the Southern Division, in response to the
11 Zone Manager for Zone 7's request for further clarification
12 regarding the "not knowingly hire" policy, stated, in substance,
13 that a temporary employment application suggesting that the
14 applicant might be a locked-out or striking employee should be
15 returned to the applicant as unacceptable, and that the applicant
16 should then be offered another application to complete, in which
17 the applicant would not reveal that he or she was a locked-out or
18 striking employee.

19 Overt Act No. 47: In or about November 2003, the Store
20 Director for Store No. 55 in La Canada contacted a locked-out
21 employee from Store No. 705 in Pacific Palisades about working at
22 Store No. 55 using a false name and social security number.

23 Overt Act No. 48: In or about November 2003, the Store
24 Director for Store No. 55 instructed locked-out employees working
25 at his store not to retain their pay stubs and other records that
26 reflected their having worked under false names and social
27 security numbers.

1 Overt Act No. 49: In or about November 2003, the Store
2 Director for Store No. 55 told a locked-out employee that
3 locked-out employees who worked during the lockout would be
4 "taken care of," or words to that effect, by RALPHS after the
5 lockout.

6 Overt Act No. 50: In or about November 2003, in a
7 conversation with the Store Director for Store No. 759 in
8 Westwood, the Group Vice-President for the Central Division
9 endorsed the practice of encouraging recently hired RALPHS'
10 employees to quit their employment at RALPHS and resign their
11 Union memberships, so that they could be rehired as temporary
12 replacement workers.

13 Overt Act No. 51: In or about November 2003, the Store
14 Director for Store No. 630 in Altadena asked the Store Director
15 for Store No. 759 in Westwood about the availability of
16 experienced or locked-out employees. In response, the Store
17 Director at Store No. 759 stated that he would ask
18 locked-out employees from his store whether they were interested
19 in working at Store No. 630.

20 Overt Act No. 52: In or about November 2003, the Store
21 Director for Store No. 759 referred two locked-out employees from
22 his store to work as temporary replacement workers at
23 Store No. 630.

24 Overt Act No. 53: In or about November 2003, the Store
25 Director for Store No. 759 asked the Store Director for Store
26 No. 630 whether he had any locked-out employees whom he could
27 refer for employment at Store No. 759. In response, the Store
28 Director for Store No. 630 stated that he did not have any

1 locked-out employees whom he could refer, but suggested that the
2 Store Director for Store No. 759 ask the Store Director for Store
3 No. 193 in Burbank if he had any locked-out employees he could
4 refer.

5 Overt Act No. 54: In or about November 2003, the Store
6 Director for Store No. 193 referred a locked-out employee to work
7 as a temporary replacement worker at Store No. 759.

8 Overt Act No. 55: In or about November 2003, the Store
9 Director for Store No. 759 asked the Zone Manager for Zone 4 how
10 he could be expected to reopen the seafood department at Store
11 No. 759, as the Zone Manager had ordered, given the shortage of
12 qualified employees. In response, the Zone Manager for Zone 4
13 stated, "Use your connections. Make some phone calls. I don't
14 care. Just get it open," or words to that effect, which the
15 Store Director understood to be an instruction to find locked-out
16 or striking employees willing to work at his store.

17 Overt Act No. 56: In or about November 2003, the Group
18 Vice-President for the Southern Division told the Store Director
19 for Store No. 167 in San Diego that social security numbers of
20 temporary replacement workers were not being checked at that
21 time; instructed the Store Director to start looking for some
22 "experienced help"; and recommended that the Store Director
23 "check with competitors to see if there's any experienced help
24 out there," or words to that effect, which the Store Director
25 understood to be an instruction to recruit locked-out Albertsons
26 and striking Vons employees.

27 Overt Act No. 57: On or about November 1, 2003, at the
28 direction of the Store Director for Store No. 47 in Van Nuys, a

1 locked-out employee from Store No. 81 in Woodland Hills used his
2 wife's name and social security number to complete a temporary
3 employment application, INS Form I-9, and IRS Form W-4.

4 Overt Act No. 58: On or about November 1, 2003, the
5 Store Director for Store No. 47 falsely certified under penalty
6 of perjury in an INS Form I-9 that he had inspected and verified
7 a driver's license and social security card presented by "Brenda
8 Anderson," an applicant for a temporary replacement position.
9 In fact, the applicant was Brenda Anderson's husband and the
10 Store Director had not inspected or verified any such
11 identification documents.

12 Overt Act No. 59: On or about November 7, 2003, the
13 President of Ralphs sent a letter to locked-out employees falsely
14 stating, among other things: "Since the union announced on
15 October 31, 2003 that it was eliminating picket lines from
16 Ralphs, many of you have asked about returning to your jobs
17 Until the union calls off its strike against Vons, you
18 will not be allowed to return to work." In fact, by that time,
19 RALPHS had permitted and encouraged hundreds of locked-out
20 employees to secretly return to work under false identities.

21 Overt Act No. 60: In or about late November 2003,
22 during a visit to Store No. 732 in Silver Lake, the Zone Manager
23 for Zone 15, upon encountering a locked-out employee whom he had
24 known for several years and who was then working as a temporary
25 replacement worker at Store No. 732, shook hands with the locked-
26 out employee, winked at him, and greeted the locked-out employee
27 by his brother's name.

1 Overt Act No. 61: In or around Thanksgiving of 2003,
2 the Zone Manager of Zone 7 suggested to the Store Director of
3 Store No. 4 in Laguna Beach, who was having difficulty operating
4 her store with only temporary replacement workers, that she
5 attempt to swap locked-out employees with a Store Director from
6 outside of Zone 7. The Zone Manager further told the Store
7 Director that hiring locked-out employees would not jeopardize
8 her job because, "[w]hen this is all over, there's going to be
9 . . . an immunity where this will all be kind of washed under
10 [the bridge]," or words to that effect, which the Store Director
11 understood to be permission to hire locked-out employees.

12 Overt Act No. 62: In or about late November or early
13 December 2003, during a visit to Store No. 34 in Laguna Niguel,
14 the Group Vice-President for the Southern Division thanked two
15 temporary replacement workers, who the Group Vice-President knew
16 to be locked-out employees. One of these employees was the
17 daughter of the Store Director for Store No. 34, and the other's
18 name and photograph had appeared on large banners in RALPHS
19 stores as part of a company-wide advertising campaign.

20 Overt Act No. 63: In or about November or December
21 2003, the Group Vice-President for the Southern Division entered
22 Store No. 187 in Tustin Heights while the Store Director was at
23 lunch. When the Group Vice-President saw the wife of the Store
24 Director for Store No. 163 (who he knew to be a locked-out
25 employee) working as a temporary replacement worker in the front
26 portion of the store, he immediately left the store. He then
27 called the Zone Manager for Zone 8 and told him to tell the Store
28 Director for Store No. 187 to be more careful about whom he left

1 in charge of the store while he was away from the store at lunch.

2 Overt Act No. 64: In or about November or December
3 2003, the Zone Manager for Zone 7 directed that a locked-out
4 employee who had returned to work under a false name and social
5 security number be moved from Store No. 34 in Laguna Niguel to
6 Store No. 99 in Foothill Ranch because she had been recognized
7 and her photograph taken by a union member.

8 Overt Act No. 65: In or about November 2003 or
9 December 2003, the Store Director for Store No. 759 in Westwood
10 informed the Zone Manager for Zone 4 that: (a) the Store Director
11 had asked the Store Directors for Store Nos. 630 and 193 in
12 Altadena and Burbank, respectively, about locked-out employees
13 who were willing to work at Store No. 759; (b) the Store Director
14 for Store No. 193 had referred a locked-out employee to work at
15 Store No. 759; and (c) the locked-out employee had recruited a
16 few other locked-out employees to work at Store No. 759.
17 The Zone Manager then asked the Store Director, "Are [the locked-
18 out employees] any good? Are they helping?" or words to that
19 effect, to which the Store Director responded that the locked-out
20 employees were helpful.

21 Overt Act No. 66: In or about November or December
22 2003, the Zone Manager for Zone 3 told a locked-out employee who
23 had been working during the lockout under her true name and
24 social security number at Store No. 609 in Riverside, to start
25 using the name and social security number of a family member if
26 she wanted to continue to work during the lockout.

27 Overt Act No. 67: On or about December 16, 2003, the
28 Store Director for Store No. 76 in Mission Viejo informed the

1 Zone Manager for Zone 7, via e-mail, that the Meat Merchandiser
2 for Zone 7 "is using my meat guys," which the Zone Manager and
3 Store Director both understood referred to locked-out meat
4 cutters, "for a couple of other stores. They will start at my
5 store and go to two others."

6 Overt Act No. 68: On or about December 23, 2003, the
7 Store Director for Store No. 748 in Irvine told the Zone Manager
8 for Zone 7, via e-mail, that "Larsen trucking," which the Store
9 Director and Zone Manager both understood referred to a
10 locked-out employee who was assisting with deliveries at RALPHS
11 stores during the lock-out, "came by and relieved my warehouse
12 pains by 6 pallets," or words to that effect.

13 Overt Act No. 69: In or about late December 2003, a
14 locked-out employee, while visiting his home store, told the
15 Group Vice-President for the Northern Division that he (the
16 locked-out employee) was working at Store No. 47 in Van Nuys to
17 help RALPHS during the lockout.

18 Overt Act No. 70: In or about December 2003 or January
19 2004, the Store Director for Store No. 297 in Santa Clarita
20 instructed a temporary replacement worker, whom the Store
21 Director knew to be a locked-out employee working under a false
22 name and social security number, to cash her weekly payroll
23 checks at the store.

24 Overt Act No. 71: In or about January 2004, the Store
25 Director for Store No. 680 in Santa Barbara transferred a
26 locked-out employee, who had been working as a temporary
27 replacement worker at Store No. 680 since October 2003 and who
28 the Store Director knew to be a locked-out employee, to

1 Store No. 6 in Encino.

2 Overt Act No. 72: On or about January 8, 2004, the
3 Store Director for Store No. 188 in Dana Point informed the Zone
4 Manager for Zone 7, via e-mail, that "'skilled' help [was]
5 disappearing," which the Zone Manager understood to mean that his
6 instruction to terminate all known or suspected locked-out
7 employees in the aftermath of the newspaper article described in
8 paragraph 85 above was being followed.

9 Overt Act No. 73: On or about January 9, 2004, the
10 Group Vice-President for the Southern Division told the Store
11 Director for Store No. 163 in San Juan Capistrano, whose name had
12 appeared in the newspaper article described in paragraph 85,
13 above, that the Store Director was being suspended with pay, but
14 that he absolutely was not to tell anybody, including his wife,
15 what was happening or that he was on suspension.

16 Overt Act No. 74: On or about January 9, 2004, the
17 Group Vice-President for the Southern Division told the Zone
18 Manager for Zone 5 that: (a) RALPHS could not protect Store
19 Directors who had hired locked-out employees under false names
20 and social security numbers; (b) any resulting adverse
21 consequences to Store Directors were "just part of the job," or
22 words to that effect; and (c) the Zone Manager should "stay
23 strong," or words to that effect.

24 Overt Act No. 75: On or about January 10, 2004, the
25 Store Director or Manager of Operations for Store No. 161 in
26 Irvine informed the Zone Manager for Zone 7, via e-mail, that
27 there was "[n]o quality help," which the Zone Manager understood
28 to be confirmation that all locked-out employees had been

1 terminated at Store No. 161 in the aftermath of the newspaper
2 article described in paragraph 85 above.

3 Overt Act No. 76: In or about mid-January 2004, RALPHS
4 issued an IRS Form W-2 falsely attributing to a fictitious person
5 the earnings of a locked-out employee who had worked during the
6 lockout at Store No. 680 in Santa Barbara, and sent the
7 IRS Form W-2 to a rental property owned by the locked-out
8 employee.

9 Overt Act No. 77: On or about February 5, 2004, the
10 President of Ralphs sent an internal memorandum to RALPHS'
11 management personnel, in which, while noting that "the United
12 States Attorney's Office is looking into allegations that Ralphs
13 Grocery Company and its store management members have hired
14 locked-out UFCW members and allowed them to work under false
15 identities, including false social security numbers," he falsely
16 asserted that: "All company employees must abide by our hiring
17 procedures which provide that the hiring of any employee of an
18 employer involved in the current labor dispute is absolutely
19 prohibited and will not be tolerated[.]" (bold and italics in
20 original). In fact, RALPHS' written policy did not "absolutely"
21 prohibit the hiring of locked-out and striking employees or
22 provide that such conduct "will not be tolerated," and its
23 policy, as applied, was to permit, encourage, condone, and/or
24 deliberately ignore the hiring of such employees.

25 Overt Act No. 78: In or about March or April 2004, the
26 Group Vice-President for the Southern Division falsely claimed in
27 a conversation with the Zone Manager for Zone 5 that on October
28 18, 2003: (a) the Group Vice-President and the Zone Manager

1 together had seen a locked-out employee working at Store No. 108
2 in La Jolla; and (b) the Group Vice-President had instructed the
3 Zone Manager to terminate the locked-out employee at that time.

4 Overt Act No. 79: In or about April or May 2004,
5 RALPHS paid approximately \$63 million to Albertsons in accordance
6 with its obligations under the MSAA.

7 Overt Act No. 80: In or about April or May 2004,
8 RALPHS paid approximately \$84 million to Vons in accordance with
9 its obligations under the MSAA.

10 Overt Act No. 81: On or about July 20, 2004, the Group
11 Vice-President of Human Resources/Labor Relations falsely
12 testified under oath before the California Unemployment Insurance
13 Appeals Board that, other than from the results of an
14 investigation by RALPHS' legal department, he knew of only one
15 store where bargaining unit members had been rehired during the
16 lockout under false identities. In fact, the Group Vice-
17 President had been informed by the RALPHS Manager of Employee
18 Relations in early February 2004, both verbally and in writing,
19 that a Kroger subsidiary was reporting that locked-out employees
20 had been hired under false names and social security numbers at
21 forty or more RALPHS stores.

22 Overt Act No. 82: On or about July 27, 2004, the
23 President of Ralphs sent a memorandum to "Ralphs Team Members"
24 falsely reciting that "[w]e have now determined that some reports
25 of misconduct are correct; some members of Ralphs management did
26 violate Company policies and encouraged or permitted some locked-
27 out employees to work during the strike." In fact, these
28 "members of Ralphs management" were acting consistent with

1 RALPHS' policy, as applied, which permitted, encouraged,
2 condoned, and/or deliberately ignored the hiring of locked-out
3 employees by Store Directors.

4 Overt Act No. 83: Beginning in or about late July
5 2004, and continuing through the date of this Indictment, RALPHS
6 concealed, withheld, and delayed producing documents that were
7 responsive to federal grand jury subpoenas served upon RALPHS.

1 COUNTS TWO THROUGH FIFTEEN

2 [42 U.S.C. § 408(a)(7)(B) and 18 U.S.C. § 2]

3 [False Representation Of Social Security Numbers]

4 101. The Grand Jury hereby repeats and realleges
5 paragraphs 1 through 51, 56, 57, and 61 through 100 of this
6 Indictment.

7 102. During the lockout, RALPHS caused hundreds of
8 locked-out employees to adopt and use false social security
9 numbers for a number of purposes, including:

10 a. To enable RALPHS to rehire locked-out employees as
11 temporary replacement workers;

12 b. To enable RALPHS to employ skilled and experienced
13 employees at its stores during the lockout;

14 c. To enable RALPHS to conceal its employment of
15 locked-out employees from their Unions and from fellow union
16 members;

17 d. To enable RALPHS to conceal its illegal conduct
18 from the NLRB, SSA, IRS, and other governmental agencies; and

19 e. To undermine the labor action as further described
20 in paragraph 56 above.

21 103. During the approximate periods specified below, in the
22 Central District of California and elsewhere, defendant
23 RALPHS GROCERY COMPANY, by and through its officers, employees,
24 and agents, and aided and abetted by others known and unknown to
25 the Grand Jury, knowingly, with intent to deceive, and for the
26 purposes set forth in paragraph 102 above, caused each of the
27 following locked-out employees to falsely represent the following
28 number to be the social security number assigned to him or her by

the Commissioner of Social Security, when, in fact, as RALPHS well knew, that number was not the social security number assigned to that locked-out employee by the Commissioner of Social Security:

<u>COUNT</u>	<u>TIME PERIOD</u>	<u>LOCKED-OUT EMPLOYEE</u>	<u>FALSE SSN</u>
TWO	09/29/03 - 01/02/04	Wendy Horaček	606-05-XXXX
THREE	09/30/03 - 12/03/03	Kerrin Moote	608-23-XXXX
FOUR	10/05/03 - 02/19/04	Edward Wren	562-05-XXXX
FIVE	10/12/03 - 01/03/04	Donald Angier	523-30-XXXX
SIX	10/13/03 - 01/31/04	Frances Boroian, aka Frances Swanson	342-68-XXXX
SEVEN	10/20/03 - 12/18/03	Suzanne McGarvey	524-44-XXXX
EIGHT	10/20/03 - 12/25/03	Nicole Pytel	569-69-XXXX
NINE	11/01/03 - 01/22/04	George Cunningham	533-46-XXXX
TEN	11/03/03 - 02/19/04	Kathy Rodriguez	573-60-XXXX
ELEVEN	11/05/03 - 01/22/04	Cynthia Hicks	562-79-XXXX
TWELVE	11/18/03 - 01/31/04	Elizabeth Calabrese	602-48-XXXX
THIRTEEN	11/29/03 - 02/04/04	Marsha Montgomery	180-40-XXXX
FOURTEEN	12/26/03 - 02/19/04	Raul Bonwell	546-61-XXXX
FIFTEEN	12/28/03 - 02/19/04	Jason Wyer	555-65-XXXX

COUNTS SIXTEEN THROUGH TWENTY

[18 U.S.C. §§ 1028(a)(7) and 2]

[Identity Fraud]

104. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 61 through 100 of this Indictment.

105. During the approximate periods specified below, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, knowingly, and with intent to commit and to aid and abet unlawful activity constituting violations of Federal law (as described further in paragraphs 98 and 99 above), caused each of the following locked-out employees to transfer and use, without lawful authority, in and affecting interstate commerce, the means of identification of another person, as described below:

<u>COUNT</u>	<u>TIME PERIOD</u>	<u>LOCKED-OUT EMPLOYEE</u>	<u>MEANS OF IDENTIFICATION</u>
SIXTEEN	09/30/03 - 12/03/03	Kerrin Moote	1. Name of "Tyler Moote," which was the name of Kerrin Moote's son 2. Social security number 608-23-XXXX, a valid social security number issued to a person other than Kerrin Moote
SEVENTEEN	11/01/03 - 01/22/04	George Cunningham	1. Name of "Brenda Anderson," which was the name of George Cunningham's wife 2. Social security number 533-46-XXXX, a valid social security number issued to a person other than George Cunningham

<u>COUNT</u>	<u>TIME PERIOD</u>	<u>LOCKED-OUT EMPLOYEE</u>	<u>MEANS OF IDENTIFICATION</u>
EIGHTEEN	11/18/03 - 01/31/04	Elizabeth Calabrese	1. Name of "Ashley Franz," which was the name of Elizabeth Calabrese's daughter 2. Social security number 602-48-XXXX, a valid social security number issued to a person other than Elizabeth Calabrese
NINETEEN	12/26/03 - 02/19/04	Raul Bonwell	1. Name of "Cynthia Bonwell," which was the name of Raul Bonwell's wife 2. Social security number 546-61-XXXX, a valid social security number issued to a person other than Raul Bonwell
TWENTY	12/28/03 - 02/19/04	Jason Wyer	1. Name of "Debra Wyer," which was the name of Jason Wyer's wife 2. Social security number 555-65-XXXX, a valid social security number issued to a person other than Jason Wyer

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1 received in 2003 by such employees who worked for RALPHS during
2 the lockout under false names and social security numbers;

3 e. The true and correct amounts of income received in
4 2003 by people whose names and social security numbers were used
5 by locked-out employees who worked for RALPHS during the lockout;

6 f. The true and correct amounts of withheld social
7 security contributions to be applied in 2003 to social security
8 accounts of people whose names and social security numbers were
9 used by locked-out employees who worked for RALPHS during the
10 lockout; and

11 g. The fact that no federal income taxes should have
12 been withheld by RALPHS for people who did not work for RALPHS in
13 2003, but whose names and social security numbers were used by
14 locked-out employees who worked for RALPHS during the lockout.

15 108. RALPHS falsified, concealed, and covered up, and
16 caused others to falsify, conceal, and cover up, these facts by
17 and through the following trick, scheme, and device:

18 a. RALPHS caused locked-out employees who agreed to
19 work during the lockout to complete IRS Forms W-4 using false
20 names and social security numbers, and to sign these false forms
21 under penalty of perjury;

22 b. In or about mid-January 2004, RALPHS issued
23 IRS Forms W-2 for 2003 to locked-out employees who worked during
24 the lockout under false names and social security numbers, which:
25 (i) falsely underreported the amounts of income received by these
26 employees during 2003; and (ii) falsely understated the amounts
27 of social security contributions that should have been withheld
28 from these employees' earnings;

1 c. In or about mid-January 2004, RALPHS issued
2 IRS Forms W-2 for 2003 to people who did not work for RALPHS
3 during 2003, but whose names and social security numbers were
4 used by locked-out employees who worked during the lockout,
5 which: (i) falsely attributed income to these people that they
6 did not receive during 2003; and (ii) falsely applied withheld
7 social security contributions to their social security accounts;

8 d. In or about March 2004, RALPHS filed the false
9 IRS Forms W-2 described in subparagraphs b and c above with SSA,
10 which IRS Forms W-2 RALPHS knew or could have reasonably foreseen
11 would later be furnished by SSA to IRS; and

12 e. RALPHS concealed and covered up its issuance of
13 false IRS Forms W-2 by not issuing and filing, and not timely
14 issuing and filing, IRS Forms W-2c correcting the false and
15 inaccurate information in the false IRS Forms W-2 that RALPHS had
16 previously issued for 2003.

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[18 U.S.C. § 1956(h)]

[Money Laundering Conspiracy]

109. The Grand Jury hereby repeats and realleges paragraphs 1 through 108 of this Indictment.

I. "SPECIFIED UNLAWFUL ACTIVITY"

110. As used in this Count Twenty-Two, the term "Specified Unlawful Activity" refers to RALPHS, knowingly, and with intent to commit and to aid and abet unlawful activity constituting violations of Federal law (as further described in paragraphs 98 and 99 above), causing locked-out employees to transfer and use, without lawful authority, in and affecting interstate commerce, other individuals' names, social security numbers, and other means of identification, to enable RALPHS to hire these locked-out employees to work during the lockout (as further described in paragraphs 61 through 100 and 105 above), in violation of Title 18, United States Code, Section 1028(a)(7).

II. THE OBJECTS OF THE MONEY LAUNDERING CONSPIRACY

111. Beginning in or about mid-October 2003, and continuing until in or about early March 2004, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, together with others known and unknown to the Grand Jury, combined, conspired, and agreed to commit the following money laundering offenses against the United States:

a. To commit promotional money laundering by knowingly conducting, causing others to conduct, and aiding and abetting others in conducting financial transactions involving

1 the proceeds of Specified Unlawful Activity, which transactions
2 affected interstate commerce, knowing that the property involved
3 in the financial transactions represented the proceeds of some
4 form of unlawful activity, and with the intent to promote the
5 carrying on of Specified Unlawful Activity, in violation of
6 Title 18, United States Code, Section 1956(a)(1)(A)(i); and

7 b. To commit concealment money laundering by
8 knowingly conducting, causing others to conduct, and aiding and
9 abetting others in conducting financial transactions involving
10 the proceeds of Specified Unlawful Activity, which transactions
11 affected interstate commerce, knowing that the property involved
12 in the financial transactions represented the proceeds of some
13 form of unlawful activity, and knowing that the financial
14 transactions were designed, in whole and in part, to conceal and
15 disguise the ownership and control of the proceeds of Specified
16 Unlawful Activity, in violation of Title 18, United States Code,
17 Section 1956(a)(1)(B)(i).

18 **III. THE MANNER AND MEANS OF THE MONEY LAUNDERING CONSPIRACY**

19 112. The objects of the money laundering conspiracy were
20 achieved in the manner and by the means described below.

21 113. As described further in Count One of this Indictment:

22 a. During the lockout, hundreds of locked-out
23 employees worked at RALPHS stores using other individuals' names,
24 social security numbers, and other means of identification;

25 b. RALPHS paid these locked-out employees on a weekly
26 basis, for work performed during the preceding week, with
27 paychecks issued in the false names that they were using; and
28

1 c. Knowing that these paychecks could not be cashed
2 at a bank or other reputable check-cashing institution because
3 they had been issued in false names, RALPHS permitted the locked-
4 out employees to cash them at RALPHS stores.

5 114. For purposes of this Count Twenty-Two, wages earned by
6 locked-out employees who worked for RALPHS during the lockout
7 became the proceeds of Specified Unlawful Activity, at the
8 latest, when the Kroger subsidiary, Fred Meyer, electronically
9 transmitted weekly payroll information from its headquarters in
10 Portland, Oregon, to RALPHS' headquarters in Compton, California,
11 thereby enabling RALPHS to print and distribute the weekly
12 paychecks.

13 115. In issuing weekly paychecks in false and assumed names
14 and delivering them to locked-out employees who were working
15 using the names or social security numbers of other individuals,
16 RALPHS promoted the carrying on of Specified Unlawful Activity by
17 rewarding these locked-out employees for working for RALPHS
18 during the lockout using the names, social security numbers, and
19 other means of identification of other individuals, and by
20 encouraging these locked-out employees to continue to do so.

21 116. In cashing the weekly paychecks issued to these
22 locked-out employees in the false and assumed names they were
23 using to work for RALPHS during the lockout, RALPHS concealed and
24 disguised the ownership and control of the proceeds of Specified
25 Unlawful Activity by concealing and disguising the true
26 identities of the locked-out employees who received and cashed
27 these checks.

COUNTS TWENTY-THREE THROUGH THIRTY-THREE

[18 U.S.C. §§ 1956(a)(1)(B)(i) and 2]

[Concealment Money Laundering]

117. The Grand Jury hereby repeats and realleges paragraphs 1 through 116 of this Indictment.

118. On or about the following dates, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, conducted, caused others to conduct, and aided and abetted others in conducting the following financial transactions involving the proceeds of Specified Unlawful Activity (as defined in paragraph 110 above), which transactions affected interstate commerce, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, and knowing that the financial transactions were designed, in whole and in part, to conceal and disguise the ownership and control of the proceeds of Specified Unlawful Activity:

<u>COUNT</u>	<u>DATE</u>	<u>FINANCIAL TRANSACTION</u>
TWENTY-THREE	10/31/03	Cashing of paycheck 71959336 at RALPHS Store No. 15 in San Clemente, California, in the amount of \$347.39, made payable to "Tyler D. Moote," the identity used by locked-out employee Kerrin Moote
TWENTY-FOUR	11/10/03	Cashing of paycheck 72060172 at RALPHS Store No. 210 in Los Angeles, California, in the amount of \$777.47, made payable to "Samantha Riley," the identity used by locked-out employee Suzanne McGarvey

<u>COUNT</u>	<u>DATE</u>	<u>FINANCIAL TRANSACTION</u>
TWENTY-FIVE	12/05/03	Cashing of paycheck 72378676 at RALPHS Store No. 680 in Santa Barbara, California, in the amount of \$828.30, made payable to "Leroy Brin," the identity used by locked-out employee Donald Angier
TWENTY-SIX	12/05/03	Cashing of paycheck 72361514 at RALPHS Store No. 34 in Laguna Niguel, California, in the amount of \$569.66, made payable to "Samantha Norman," the identity used by locked-out employee Nicole Pytel
TWENTY-SEVEN	12/06/03	Cashing of paycheck 72197855 at RALPHS Store No. 47 in Van Nuys, California, in the amount of \$980.93, made payable to "Brenda J. Anderson," the identity used by locked-out employee George Cunningham
TWENTY-EIGHT	12/27/03	Cashing of paycheck 72637943 at RALPHS Store No. 297 in Santa Clarita, California, in the amount of \$633.23, made payable to "Frances Guzzeta," the identity used by locked-out employee Marsha Montgomery
TWENTY-NINE	01/03/04	Cashing of paycheck 72717135 at RALPHS Store No. 55 in La Canada, California, in the amount of \$610.11, made payable to "Carolyn Hatfield," the identity used by locked-out employee Kathy Rodriguez
THIRTY	01/09/04	Cashing of paycheck 72804783 at RALPHS Store No. 47 in Van Nuys, California, in the amount of \$606.15, made payable to "Debra A. Wyer," the identity used by locked-out employee Jason Wyer
THIRTY-ONE	01/16/04	Cashing of paycheck 72745319 at RALPHS Store No. 34 in Laguna Niguel, California, in the amount of \$239.67, made payable to "Wendy Zehnder," the identity used by locked-out employee Wendy Horacek
THIRTY-TWO	02/06/04	Cashing of paycheck 73067218 at RALPHS Store No. 748 in Irvine, California, in the amount of \$451.02, made payable to "Tiffany A. Boroian," the identity used by locked-out employee Frances Boroian, also known as Frances Swanson

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<u>COUNT</u>	<u>DATE</u>	<u>FINANCIAL TRANSACTION</u>
THIRTY-THREE	02/07/04	Cashing of paycheck 73066694 at RALPHS Store No. 192 in Brea, California, in the amount of \$956.52, made payable to "Steve Rogers," the identity used by locked-out employee Edward Wren

COUNTS THIRTY-FOUR THROUGH FORTY-NINE

[18 U.S.C. §§ 1027 and 2]

[False Statements Relating To Employee Benefit Plans]

119. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. BACKGROUND

A. The Labor Management Relations Act And
The Employee Retirement Income Security Act

120. At all times relevant to this Indictment, the Benefit and Pension Funds were each subject to and governed by the Labor Management Relations Act of 1947 (the "LMRA") and the Employee Retirement Income Security Act of 1974 ("ERISA").

B. Fiduciary Duties Of The Funds' Trustees

121. Under the LMRA and ERISA, the Trustees of the Funds were deemed "fiduciaries" of the Funds, and owed certain legal duties, known as "fiduciary duties," to the Funds, the participants in the plans associated with the Funds, and the participants' beneficiaries.

122. During the time relevant to this Indictment, the fiduciary duties owed by the Trustees of the Funds included:

a. The duty to act solely in the interests of the Funds, plan participants, and their beneficiaries, for the exclusive purposes of providing benefits to plan participants and their beneficiaries and defraying the reasonable expenses of administering the Funds;

b. The duty not to act in any transaction involving the Funds on behalf of, or while representing, a party whose

1 interest was adverse to the Funds, plan participants, or their
2 beneficiaries;

3 c. The duty to act with honesty and candor, and not
4 mislead, the other Trustees and the Administrator of the Funds in
5 matters relating to the administration of the Funds;

6 d. The duty to timely disclose to the other Trustees,
7 the Administrator, and plan participants an employer's failure to
8 make required contributions to the Funds; and

9 e. The duty to prevent the other Trustees from
10 breaching their fiduciary duties.

11 **C. RALPHS' Status As A Fiduciary Of The Funds**

12 123. During the time relevant to this Indictment, RALPHS
13 was itself a fiduciary of the Funds because it:

14 a. Knowingly underreported to the Funds the hours
15 worked by locked-out and striking employees during the lockout;
16 and

17 b. Had the authority to appoint, retain, and remove a
18 trustee.

19 124. As a fiduciary of the Funds, RALPHS, as a corporation
20 and organization, had a duty:

21 a. To use reasonable diligence to discover whether it
22 had underreported to the Funds hours worked by locked-out and
23 striking employees during the lockout, and/or withheld
24 contributions due and owing the Funds;

25 b. Upon discovering such information, to fully and
26 promptly disclose it to the Board and the Administrator; and

27 c. To monitor the performance of the RALPHS' Trustee
28 and Alternate Trustee to ensure that they were administering the

1 Funds consistently with their duties under the plan documents,
2 the LMRA, and ERISA.

3 D. RALPHS' Recordkeeping And Reporting Obligations

4 125. For the period of the lockout, RALPHS was required by
5 ERISA:

6 a. To maintain accurate records of hours worked by
7 bargaining unit members; and

8 b. To give the Administrator of the Funds, on a
9 monthly basis, true and correct information concerning: (i) which
10 bargaining unit members worked during the preceding month; and
11 (ii) how many hours they worked, individually and in total.

12 126. In addition to the 57 Remittance Reports that RALPHS
13 was required to submit to the Funds by the twentieth of each
14 month (as described in paragraphs 34 through 38 above), it was
15 also required to submit to the Funds at or about the same time:

16 a. A "Contributions Accounting Transmittal" form,
17 which reported, among other things, the total number of hours
18 used to calculate the amount of contributions RALPHS was
19 obligated to make to the Funds on behalf of a particular category
20 of grocery worker for a particular month based, in part, on the
21 total number of hours worked by that category of grocery worker
22 during that month; and

23 b. An adjustments form, which identified errors and
24 omissions, of which RALPHS had become aware, in prior months'
25 Remittance Reports and Contributions Accounting Transmittal
26 forms.

1 **E. End Of Plan Year Reporting By The Funds**

2 127. The plan year for both the Benefit Fund and the Pension
3 Fund ran from April 1 through March 31. Following the end of
4 each plan year, ERISA required the Benefit and Pension Funds to
5 each file with the United States Department of Labor ("DOL"), and
6 publish to plan participants, separate annual reports on
7 DOL Form 5500. Among other things, each Fund was required to
8 report in the Form 5500 the employer contribution receivables as
9 of the end of the plan year and the number of active participants
10 as of the end of the plan year.

11 128. The Form 5500 was prepared for the trustees by the
12 Funds' auditors. In preparing the Form 5500, the auditors
13 examined Remittance Reports, Contributions Accounting Transmittal
14 forms, adjustment forms, and other records of the Funds to
15 verify, explain, clarify, and check for accuracy and completeness
16 the information presented in the Form 5500.

17 **II. RALPHS' FALSE STATEMENTS AND REPRESENTATIONS**

18 129. During the lockout, RALPHS falsified and caused others
19 to falsify records that ERISA required it to maintain for
20 bargaining unit members who worked during the lockout, including
21 records of their true names, social security numbers, dates of
22 birth, dates of hire, addresses, status as union members,
23 eligibility for employee benefits, and hours worked during the
24 lockout.

25 130. For the reporting periods of October 2003, November
26 2003, December 2003, January 2004, and February 2004:

27 a. RALPHS caused its Benefits Administrator to submit
28 false Remittance Reports to the Administrator of the Funds,

1 which, among other things: (i) concealed the identities of
2 locked-out and striking employees who worked during the reporting
3 period; (ii) omitted hours worked by individual locked-out and
4 striking employees during the reporting period; and (iii) falsely
5 understated the total hours worked by locked-out and striking
6 employees during the reporting period;

7 b. RALPHS caused its Benefits Administrator to
8 falsely certify, under penalty of perjury, that particular
9 Remittance Reports included the names of all bargaining unit
10 members who had worked during the reporting period, and all hours
11 worked by those members during the reporting period;

12 c. RALPHS caused its Benefits Administrator to submit
13 false Contributions Accounting Transmittal forms to the Funds,
14 which, among other things, falsely understated the total hours
15 worked by locked-out and striking employees during the reporting
16 period; and

17 d. RALPHS caused its Benefits Administrator to submit
18 false adjustment forms to the Funds, which, among other things,
19 failed to list adjustments for hours worked by locked-out and
20 striking employees during the lockout, of which RALPHS was aware.

21 131. On or about the following dates, in the Central
22 District of California and elsewhere, defendant
23 RALPHS GROCERY COMPANY, by and through its officers, employees,
24 and agents, and aided and abetted by others known and unknown to
25 the Grand Jury, knowingly made and caused others to make false
26 statements and representations of fact in the following
27 documents, which documents RALPHS was required by Title I of
28 ERISA to keep as part of the records of the Funds, and which

documents were false for the reasons described in paragraph 130 above:

<u>COUNT</u>	<u>DATE</u>	<u>DOCUMENT</u>
THIRTY-FOUR	12/15/03	Remittance Report submitted by RALPHS for November 2003 for Graduate Clerks who were members of Local 135
THIRTY-FIVE	12/15/03	Remittance Report submitted by RALPHS for November 2003 for Graduate Clerks who were members of Local 324
THIRTY-SIX	12/20/03	Contributions Accounting Transmittal form submitted by RALPHS for November 2003
THIRTY-SEVEN	12/20/03	Adjustment form submitted by RALPHS
THIRTY-EIGHT	01/13/04	Remittance Report submitted by RALPHS for December 2003 for Graduate Clerks who were members of Local 135
THIRTY-NINE	01/13/04	Remittance Report submitted by RALPHS for December 2003 for Graduate Clerks who were members of Local 324
FORTY	01/14/04	Remittance Report submitted by RALPHS for December 2003 for New Hire Meat Cutters who were members of Local 770
FORTY-ONE	01/20/04	Contributions Accounting Transmittal form submitted by RALPHS for December 2003
FORTY-TWO	01/20/04	Adjustment form submitted by RALPHS
FORTY-THREE	02/11/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 135
FORTY-FOUR	02/11/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 324
FORTY-FIVE	02/11/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 770
FORTY-SIX	02/12/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 1167

<u>COUNT</u>	<u>DATE</u>	<u>DOCUMENT</u>
FORTY-SEVEN	03/15/04	Remittance Report submitted by RALPHS for February 2004 for Graduate Clerks who were members of Local 324
FORTY-EIGHT	03/20/04	Contributions Accounting Transmittal form submitted by RALPHS for February 2004
FORTY-NINE	03/20/04	Adjustment form submitted by RALPHS

COUNT FIFTY

[18 U.S.C. §§ 1027 and 2]

[Concealment Of Facts Relating To

Employee Benefit Plans]

132. The Grand Jury hereby repeats and realleges paragraphs 1 through 51, 60 through 100, and 120 through 130 of this Indictment.

133. For the reporting periods of October 2003, November 2003, December 2003, January 2004, and February 2004:

a. RALPHS concealed from the Funds, and caused others to conceal from the Funds, the true identities of locked-out and striking employees who worked during the lockout; and

b. RALPHS concealed from the Funds, and caused others to conceal from the Funds, the true and correct number of hours worked by locked-out and striking employees during the lockout.

134. Even after reports began appearing in the press that RALPHS was hiring locked-out employees under false names and social security numbers, neither RALPHS' senior management nor RALPHS' Trustee or Alternate Trustee undertook a reasonable investigation to determine: the identities of all locked-out and striking employees who had worked for RALPHS during the lockout; the number of hours they had worked during the lockout; and whether RALPHS had truthfully and correctly reported this information to the Funds.

135. Although RALPHS began a so-called "internal investigation" in or about late January 2004, the purpose of this investigation was not to correct false Remittance Reports and other documentation submitted to the Administrator, and neither

1 RALPHS nor its Trustee or Alternate Trustee disclosed the results
2 of this so-called "internal investigation" to the other Trustees
3 or to the Administrator.

4 136. At a Board meeting on or about February 10, 2004,
5 RALPHS' Alternate Trustee:

6 a. Falsely represented to the other Food
7 Employer-appointed trustees that RALPHS was not hiring, and had
8 not hired, locked-out employees under false names and social
9 security numbers, and that the Unions' allegations that RALPHS
10 was engaging in such conduct were baseless;

11 b. Concealed and covered up from the other Trustees
12 and from the Administrator that hundreds of locked-out and
13 striking employees had worked for RALPHS during the lockout; and

14 c. Caused the Food Employer-appointed trustees to
15 vote against a special audit of RALPHS to determine whether
16 RALPHS had underreported the hours worked by locked-out and
17 striking employees during the lockout.

18 137. On or about August 10, 2004, the Trustees (with the
19 RALPHS Trustee abstaining) authorized a special audit to
20 determine whether RALPHS had underreported hours worked by
21 locked-out and striking employees during the lockout. During
22 this special audit, RALPHS:

23 a. Concealed and covered up from the auditors
24 documents, electronic records, and other information relevant and
25 material to completion of the special audit; and

26 b. Refused to disclose to the auditors the results of
27 its so-called "internal investigation."
28

1 138. Beginning in or about November 2003, and continuing
2 until on or about the date of this Indictment, in the
3 Central District of California and elsewhere, defendant
4 RALPHS GROCERY COMPANY, by and through its officers, employees,
5 and agents, and aided and abetted by and others known and unknown
6 to the Grand Jury, knowingly concealed, covered up, and failed to
7 disclose, and caused others to conceal, cover up, and fail to
8 disclose, the following facts relating to the administration of
9 the Funds, the disclosure of which was: (a) required by Title I
10 of ERISA; and (b) necessary to verify, explain, clarify, and
11 check for accuracy and completeness reports required by Title I
12 of ERISA to be published, namely, DOL Forms 5500:

13 a. The true and correct identities (including names,
14 social security numbers, and dates of births) of all of the
15 locked-out and striking employees who worked for RALPHS during
16 the lockout; and

17 b. The true and correct number of hours worked by
18 locked-out and striking employees who worked for RALPHS during
19 the lockout.

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1 d. The Unions had "submitted evidence that some of
2 the locked-out employees who have worked during the strike or are
3 now working have been doing so by using different names and
4 social security numbers[.]"

5 143. Region 31's letter invited RALPHS to submit a
6 "position paper," which Region 31 advised should, "in detail with
7 documentary evidence in support, address the allegations set
8 forth as well as set forth any defense the Employer may wish to
9 assert[.]"

10 144. On or about December 15, 2003, the Union filed another
11 unfair labor practice charge against RALPHS with Region 31,
12 alleging that RALPHS had "engaged in a selective lockout" by,
13 among other things, allowing "locked-out employees to work under
14 different names."

15 **II. RALPHS' DECEMBER 23, 2003 FALSE STATEMENTS TO THE NLRB**

16 145. On or about December 23, 2003, in the Central District
17 of California, defendant RALPHS GROCERY COMPANY, by and through
18 its officers, employees, and agents, and aided and abetted by
19 others known and unknown to the Grand Jury, knowingly and
20 willfully caused materially false, fictitious, and fraudulent
21 statements to be made in a matter within the jurisdiction of the
22 NLRB, an agency of the executive branch of the United States
23 government.

24 146. Specifically, on or about December 23, 2003, RALPHS
25 caused its labor counsel to send a letter to Region 31 containing
26 the following materially false and fraudulent statements:

27 a. "[T]hroughout the period of the lockout, the
28 Employer has discovered several employees who have changed their

1 social security numbers and worked in a different area for the
2 Company. Immediately upon discovery, those employees have been
3 denied employment and returned to locked-out status";

4 b. "[W]hen employees assume a different identity to
5 work during the lockout and are discovered, they are terminated
6 immediately";

7 c. "The Employer has made great efforts to ensure
8 that locked-out employees do not return to work under assumed
9 identities"; and

10 d. "To the best of the Employer's knowledge, there
11 are no unit employees who were locked-out and that are now
12 working with a different social security number and/or name at
13 store no. 296 or any other store."

14 147. As RALPHS well knew, these statements were false and
15 fraudulent because:

16 a. Locked-out employees who had been rehired were
17 usually only terminated when a union member saw and reported them
18 working at a RALPHS store, and, even then, in many such instances
19 the locked-out employee was not terminated, but instead assigned
20 to another store;

21 b. RALPHS had deliberately made minimal efforts to
22 ensure that locked-out employees did not return to work under
23 assumed identities, and in fact had encouraged and induced
24 locked-out employees to return to work under false identities;
25 and

26 c. RALPHS' senior management knew that there were
27 locked-out employees working under false names and social
28 security numbers at dozens of RALPHS stores.

COUNT FIFTY-TWO

[18 U.S.C. §§ 1001(a)(2) and 2]

[False Statement To Federal Agency]

148. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. BACKGROUND

149. On or about January 12, 2004, all seven Unions jointly filed with Region 31 three unfair labor practice charges against RALPHS, alleging that RALPHS was "engaging in a discriminatory selective lockout" because it had permitted locked-out employees to continue to work or return to work, including at different store locations and under different names and social security numbers.

150. On or about January 15, 2004, Region 31 sent a letter to RALPHS' labor counsel, stating, among other things, that "[a]t this juncture, the factual investigation of the [Unions'] allegations continues to be on-going," but that the Unions have "presented a *prima facie* case[.]" The letter solicited RALPHS' "legal position with respect to the issues involved."

151. On or about January 27, 2004, RALPHS' labor counsel sent a letter to Region 31, stating, among other things, that RALPHS would respond to Region 31's January 15 letter by February 3, 2004, and that RALPHS intended "to set forth in some detail the extensive efforts made by the Employer to ensure the legitimacy of its lockout."

1 **II. RALPHS' FEBRUARY 4, 2004 FALSE STATEMENTS TO THE NLRB**

2 152. On or about February 4, 2004, in the Central District
3 of California, defendant RALPHS GROCERY COMPANY, by and through
4 its officers, employees, and agents, and aided and abetted by and
5 others known and unknown to the Grand Jury, knowingly and
6 willfully caused materially false, fictitious, and fraudulent
7 statements to be made in a matter within the jurisdiction of the
8 NLRB, an agency of the executive branch of the United States
9 government.

10 153. Specifically, on or about February 4, 2004, RALPHS
11 caused its labor counsel to send a letter to Region 31 containing
12 the following materially false and fraudulent representations:

13 a. "[I]t is important to note at this juncture that
14 Ralphs' policy forbids the conduct alleged in the [Unions']
15 charges";

16 b. Any "breaches of Ralphs' own policy [have been]
17 apparently isolated and sporadic";

18 c. Hiring of locked-out employees had "resulted not
19 from an employer's policy but rather from the random and quixotic
20 behavior of certain employees in violation of company policy";

21 d. "[T]he conduct at issue here . . . is not
22 occurring across the board and is contrary to company policy";

23 e. Any such conduct "is occurring on a sporadic basis
24 over a geographically dispersed unit."

25 f. "There is no Ralphs corporate policy that is at
26 issue here [because] . . . its policy forbade [the hiring of
27 locked employees]";

1 g. "Ralphs has made a concerted effort to prevent and
2 remedy breaches of its policy since the beginning of the
3 lockout";

4 h. Ralphs has "taken corrective measures against such
5 conduct";

6 i. The alleged conduct has been "disavowed by the
7 employer as contrary to its policy";

8 j. "[W]e are not dealing with an across the board
9 practice or policy";

10 k. "No such effect [of undermining union strength]
11 can be inferred from sporadic and geographically dispersed
12 rehiring contrary to Ralphs' avowed corporate policy";

13 l. "Ralphs . . . has not done anything contrary to
14 the legitimate interests of the employees and their unions that
15 needs to be justified";

16 m. "All the locked out employees who allegedly were
17 rehired at Ralphs were and remain union members"; and

18 n. "Employees were apparently selected for re-hire
19 for reasons unrelated to their union membership, representational
20 rights or concerted activities."

21 154. As RALPHS well knew, these representations were false
22 and fraudulent because:

23 a. RALPHS' hiring of locked-out employees was
24 pervasive and systematic, and not isolated or sporadic;

25 b. RALPHS' hiring of locked-out employees was a
26 company-wide practice and policy;

27 c. RALPHS' written policy, as applied, permitted
28 Store Directors to hire locked-out employees as long as the Store

1 Directors could plausibly deny knowing that the applicant was a
2 locked-out employee;

3 d. RALPHS' actual policy was to permit, encourage,
4 condone, and deliberately ignore the hiring of locked-out
5 employees;

6 e. In hiring locked-out employees, Store Directors
7 were acting consistently with RALPHS' actual policy of
8 permitting, encouraging, condoning, and deliberately ignoring the
9 hiring of locked-out employees;

10 f. RALPHS had made only minimal efforts to prevent
11 the rehiring of locked-out employees;

12 g. RALPHS had made only minimal efforts to remedy
13 breaches of its purported policy prohibiting the rehiring of
14 locked-out employees, and generally ignored evidence of such
15 breaches;

16 h. RALPHS' hiring of hundreds of locked-out employees
17 under false names and social security numbers was contrary to the
18 interests of the employees and their Unions as it: (i) exposed
19 employees who worked under false names, social security numbers,
20 and documentation to criminal prosecution; (ii) undermined Union
21 solidarity and morale; (iii) deceived the Unions in matters
22 crucial to their negotiating positions and strategy; and (iv)
23 allowed RALPHS to mitigate the economic harm that the labor
24 action was causing it;

25 i. Locked-out employees were selected for rehire
26 because of their expressed, demonstrated, or perceived lack of
27 strong allegiance to their Unions and their willingness to join
28 with RALPHS in an illegal conspiracy whose objects included

1 defeating the labor action and deceiving their own Unions; and

2 j. In some instances, RALPHS caused locked-out
3 employees to resign their union memberships, and then rehired
4 them as temporary replacement workers with the understanding that
5 they could return to their prior positions when the lockout
6 ended.

COUNT FIFTY-THREE

[18 U.S.C. §§ 1503 and 2]

[Obstruction Of Justice]

155. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. THE FEBRUARY 5 AND 6, 2004 NOTES AND
THE FEBRUARY 5 AND 6, 2004 MEMORANDA

156. On or about February 5, 2004, the RALPHS Manager of Employee Relations (the "Employee Relations Manager") had a telephone conversation with the Fred Meyer Strike Coordinator. During this conversation, the Strike Coordinator raised concerns about reports by Fred Meyer employees who had been sent to Southern California to assist in RALPHS stores that RALPHS Store Directors were secretly hiring locked-out employees under false names and social security numbers and paying them with checks issued in false names.

157. During this telephone conversation, the Employee Relations Manager took handwritten notes ("the February 5 Notes"), which contained the following entries, among others:

T/C [Fred Meyer Strike Coordinator]
→ Wk 3 called [the RALPHS Director of Personnel and Benefits (the "Personnel Director")]

* * *

[Fred Meyer employee sent to RALPHS] -- killing her --
→ hiring people through back door
Wave #1 -- union EE's --
Using mother's name --
She handed checks to male
w/female's name --
(His mother)

[Strike Coordinator] reported 40 stores to [the Personnel Director] --

[Strike Coordinator] told her people → keep telling her -- stop handing out checks -- so FM [Fred Meyer] EE's wont [sic] be a part of it.--

1 * * *

2 FM [Fred Meyer] EE's have everything documented --

3 158. On or about February 5, 2004, the RALPHS
4 Group Vice-President of Human Resources/Labor Relations (the
5 "Group VP") directed the Employee Relations Manager to prepare a
6 memorandum of her telephone conversation with the Fred Meyer
7 Strike Coordinator.

8 159. On or about February 5, 2004, the Employee Relations
9 Manager, in accordance with the directions of the
10 Group VP, prepared a memorandum of her telephone conversation of
11 earlier that day with the Fred Meyer Strike Coordinator (the
12 "February 5 Memo"), which contained the following statements,
13 among others:

- 14 • The Strike Coordinator explained that "[o]ne day,
15 [a Fred Meyer employee who had been sent to help
16 RALPHS] approached [her] and said that [the Fred
17 Meyer employee] had told her, 'It's killing me.
18 Ralphs is hiring people through the back door.'"
- 19 • The Strike Coordinator "explained that 'hiring
20 through the back door' meant hiring locked out
21 union employees under false names/SSN."
- 22 • The Fred Meyer employee "had reported to the
23 [Strike Coordinator] that she . . . had been asked
24 to hand out payroll checks at her store
25 [The Fred Meyer employee] explicitly said that she
26 handed a male replacement worker a check with a
27 female name on it. She said that this male
28 employee was hired as his mother and that the
check was payable to his mother."
- The Strike Coordinator "said that during either
[sic] the third week of the strike . . . , she had
reported to [the Personnel Director] that about 40
stores were hiring 'through the back door.' From
[the Personnel Director's] reaction, [the Strike
Coordinator] felt that [the Personnel Director]
may not have understood the gravity of the
situation."

- 1 • The Strike Coordinator "then reported the issue to
2 her boss, [the Fred Meyer] Group VP of Store
3 Operations. [The Strike Coordinator] said that
4 [the Group Vice-President] called [the Personnel
5 Director] and talked to her about the issue later
6 in the same week."
- 7 • "The Fred Meyer employees continued reporting
8 issues to [the Strike Coordinator, who] told them
9 to stop handing out payroll checks so they (FM
10 employees) would not be 'a part of it.'"
- 11 • One Fred Meyer "employee told [the Strike
12 Coordinator] that he 'stayed in the back of the
13 store' and did not want to be involved."
- 14 • The Strike Coordinator "said that [the Personnel
15 Director] acted on the information [of employee
16 theft] . . . but that she had not acted on the
17 report of 'hiring through the back door.'"
- 18 • The Strike Coordinator "sounded very sincere.
19 She said that she was not able to sleep for some
20 time."

21 160. On or about February 6, 2004, the RALPHS
22 Group VP directed the Employee Relations Manager to prepare a
23 cover memorandum to the February 5 Memo that would: (a) be
24 addressed to RALPHS' in-house attorney, with copies to the Group
25 VP and the Director of Labor Relations; and (b) bear the legend
26 "Attorney/Client Privilege" - "Attorney Work Product."

27 161. On or about February 6, 2004, the Employee Relations
28 Manager had another telephone conversation with the Fred Meyer
Strike Coordinator regarding RALPHS' hiring of locked-out
employees under false identities.

 162. During the February 6 telephone conversation,
the Employee Relations Manager took additional handwritten notes
(the "February 6 Notes"), which contained the following entries,
among others:

T/C [Fred Meyer Strike Coordinator] --
She also told [a Kroger Human Resources Manager] --

1 Ignored her --

2 ⇒ [the Personnel Director] --
3 seemed like she was hurried --
4 rushed --
5 Maybe she didn't take [the Strike
6 Coordinator] seriously. --

7 [Strike Coordinator] talked to [her boss,
8 the Fred Meyer Group Vice-President of
9 Store Operations] -- if hear more --
10 pls call [the Personnel Director]--

11 More people called [the Strike
12 Coordinator].
13 [The Fred Meyer Group Vice-President]
14 called [the Personnel Director] -- [the
15 Strike Coordinator] in office --

16 male/female picking up check --
17 mothers/fathers/brothers/sisters --

18 * * *

19 Lots of her people -- "everyone knew"
20 they called her --
21 She told them that she had already reported it.--

22 Everybody @ FM knew -- p/r [Payroll] etc.

23 ⇒ After a while

24 She felt like she was talking to a brick wall --
25 no one listening to her. --

26 → [another Fred Meyer employee sent to RALPHS]--
27 ~ 3 wks ago --
28 [Strike Coordinator] called [the Personnel
Director] →
[Personnel Director] -- just want to pass onto
you -- my people still reporting to me -- hiring
from backdoor →
Reported it to you wk 3
Still happening --

163. On or about February 6, 2004, the Employee Relations
Manager, in accordance with the prior directions of the Group VP,
prepared a memorandum of her February 6 telephone conversation
with the Fred Meyer Strike Coordinator (the "February 6 Memo"),
which contained the following statements, among others:

- 1 ● The Strike Coordinator "said she thought about our
2 conversation and [sic] yesterday and later
3 remembered that she had also reported the hiring
4 issues to [a Kroger Human Resources Manager] . . .
5 [The Strike Coordinator] said she felt like [the
6 Kroger Human Resources Manager] had ignored her."
- 7 ● "Again, [the Strike Coordinator] sounded very
8 concerned. She said she knew how big of an issue
9 'hiring through the back door' was and 'knew that
10 we would get sued.'"
- 11 ● The Strike Coordinator "reiterated that she had
12 first reported the situation to [the Personnel
13 Director] the third week of the strike
14 [She] said she 'felt like she was talking
15 to a wall' and that 'no-one was listening' to
16 her."
- 17 ● The Strike Coordinator "said that 'everyone knew'
18 about the issue. I asked her exactly who, and she
19 said 'lots of people. Payroll knew.'"
- 20 ● "As the calls came into [the Strike Coordinator],
21 she told the Fred Meyer employees that she had
22 already reported the issue to Ralphs."
- 23 ● The Strike Coordinator "said that after awhile,
24 Fred Meyer took the attitude that they could not
25 help Ralphs if Ralphs did not help themselves."
- 26 ● The Strike Coordinator "said that she talked to
27 [the Personnel Director] about the hiring issue a
28 second time approximately three weeks ago. I
29 don't have all of the details, but I understand
30 that [a] Fred Meyer employee . . . , who works in
31 Human Resources, had reported additional incidents
32 to [the Strike Coordinator]."
- 33 ● "It sounds like [the Fred Meyer employee] asked to
34 return to Fred Meyer early because of the hiring
35 as well as food safety and theft issues she saw
36 here."
- 37 ● The Strike Coordinator "told [the Personnel
38 Director], 'My people are still reporting to me
39 that you are hiring through the back door. [The
40 Strike Coordinator] reminded [the Personnel
41 Director] that she had initially reported the
42 issue to her in week three of the strike. [The
43 Strike Coordinator] told [the Personnel Director]
44 that 'it was still happening.'"

1 164. On or about February 6, 2004, in accordance with the
2 prior directions of the Group VP, the Employee Relations Manager
3 prepared cover memoranda for the February 5 Memo and the
4 February 6 Memo, which bore the legend "Attorney/Client
5 Privilege" - "Attorney Work Product."

6 165. On or about February 6, 2004, the Employee Relations
7 Manager sent the February 5 Memo, with its cover memorandum
8 labeled "Attorney/Client Privilege" - "Attorney Work Product,"
9 and the February 6 Memo under a separate cover memorandum bearing
10 the same legend, to RALPHS' in-house counsel with copies to the
11 RALPHS Group VP and Director of Labor Relations.

12 **II. THE GRAND JURY'S INVESTIGATION**

13 166. Beginning on or about January 31, 2004, and continuing
14 through the date of this Indictment, a grand jury sitting in the
15 Central District of California has been investigating allegations
16 that RALPHS hired locked-out and striking employees to work under
17 false names, social security numbers, and documentation during
18 the lockout, in violation of various federal criminal laws (the
19 "grand jury proceedings").

20 167. On or about March 8, 2004, RALPHS was served with a
21 grand jury subpoena (the "March 8 Subpoena") requiring it to
22 produce to the grand jury, among other things: (a) any and all
23 documents relating to the hiring, employment, compensation, and
24 payment of any locked-out RALPHS employees during the period
25 September 1, 2003 to the date of the subpoena (March 8, 2004);
26 and (b) any and all documents relating to the hiring, employment,
27 compensation, and payment of any person hired by RALPHS under a
28 false, fictitious, or assumed name or identity during the period

1 September 1, 2003 to the date of the subpoena (March 8, 2004).

2 168. Both the February 5 and 6 Notes and the February 5
3 and 6 Memoranda were responsive to the requests for documents
4 contained in the March 8, 2004 subpoena.

5 **III. RALPHS' OBSTRUCTION OF THE GRAND JURY'S PROCEEDINGS**

6 169. Beginning in or about February 2004, and continuing
7 until at least in or about May 2, 2005, in the Central District
8 of California, defendant RALPHS GROCERY COMPANY, by and through
9 its officers, employees, and agents, and aided and abetted by
10 others known and unknown to the Grand Jury, corruptly influenced,
11 obstructed, and impeded, and corruptly endeavored to influence,
12 obstruct, and impede, the due administration of justice in the
13 grand jury proceedings by:

14 a. Causing the creation of cover memoranda to the
15 February 5 Memo and the February 6 Memo that falsely and
16 fraudulently asserted that the attached February 5 and 6 Memos
17 constituted "Attorney Work Product" and represented protected
18 attorney-client communications, when, in fact, neither the
19 February 5 nor the February 6 Memo reflected communications with
20 or involving an attorney or represented the work-product of an
21 attorney or someone acting at the attorney's direction; and

22 b. Concealing, withholding, and delaying the
23 production to the grand jury of documents and records that were
24 required to be produced under the March 8 Subpoena, namely, the
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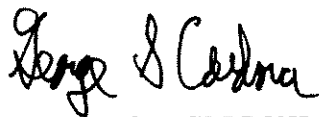
1 February 5 and 6 Notes, the February 5 Memo, and the February 6
2 Memo.

3 A TRUE BILL

4
5

Foreperson
6

7 DEBRA WONG YANG
8 United States Attorney

9 

10 GEORGE S. CARDONA
11 Chief Assistant United States Attorney

12 JEFFREY B. ISAACS
13 Special Assistant United States Attorney
Major Frauds Section

14 ADAM H. BRAUN
15 Assistant United States Attorney
Major Frauds Section

16 JOHN K. WEBB
17 Special Assistant United States Attorney
Major Frauds Section

18 JEREMY D. MATZ
19 Assistant United States Attorney
Major Frauds Section
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